28841.N.28.

THE

# Regulations & Proclamations

OF

# TRAVANCORE

## Volume VI.

1100-1105 M. E.

PUBLISHED BY PERMISSION OF THE
GOVERNMENT OF TRAVANCORE.

TRIVANDRUM:
'SRIDHARA' POWER PRESS,

1930.

(*All rights reserved.*)

~~26228~~ 28841



## I. The Travancore Law Reports.—*Contd.*


VOL. XI.—*Concld.*

| PAGE. | | PAGE. |
|---|---|---|
| 200 | ... | 790 |
| 202 | ... | 657 |
| 208 | ... | 80 |
| 211 | ... | 175 |
| 213 | ... | 657 |
| 215 | ... | 128 |

VOL. XII.

| PAGE. | | PAGE. |
|---|---|---|
| 8 | ... | 201 |
| 23 | ... | 245, 657 |
| 27 | ... | 764 |
| 33 | ... | 281 |
| 39 | ... | 138, 175, 619 |
| 87 | ... | 75 |
| 101 | ... | 250 |
| 111 | ... | 250 |
| 132 | ... | 632 |
| 138 | ... | 824 |
| 141 | ... | 251 |
| 145 | ... | 397, 816 |
| 149 | ... | 201 |
| 155 | ... | 340 |
| 165 | ... | 82 |
| 175 | ... | 202 |
| 177 | ... | 119, 586 |
| 182 | ... | 138, 632 |
| 183 | ... | 689 |
| 186 | ... | 123 |
| 188 | ... | 657 |
| 192 | ... | 251 |
| 194 | ... | 573, 595 |
| 198 | ... | 900 |
| 202 | ... | 882 |

VOL. XIII.

| PAGE. | | PAGE. |
|---|---|---|
| 5 | ... | 251, 468, 479, 706 |

VOL. XIII.—*Concld.*

| PAGE. | | PAGE. |
|---|---|---|
| 10 | ... | 187, 618 |
| 27 | ... | 102, 163 |
| 50 | ... | 245 |
| 53 | ... | 395 |
| 56 | ... | 202 |
| 59 | ... | 900 |
| 74 | ... | 175, 187 |
| 76 | ... | 27, 762 |
| 78 | ... | 389, 817 |
| 82 | ... | 306 |
| 86 | ... | 256, 703 |
| 93 | ... | 291 |
| 104 | ... | 202 |
| 122 | ... | 517, 632 |
| 126 | ... | 776 |
| 128 | ... | 433 |
| 133 | ... | 176 |
| 140 | ... | 795 |
| 144 | ... | 406 |
| 149 | ... | 176, 706 |
| 154 | ... | 203 |
| 159 | ... | 80 |
| 164 | ... | 608 |
| 171 | ... | 613 |
| 177 | ... | 1197 |
| 181 | ... | 235 |
| 185 | ... | 128 |
| 200 | ... | 138 |
| 207 | ... | 164, 202 |
| 210 | ... | 920 |
| 211 | ... | 203 |
| 221 | ... | 588 |

*App.*

| PAGE. | | PAGE. |
|---|---|---|
| 9 | ... | 692, 714 |
| 13 | ... | 468 |
| 35 | ... | 920 |
| 36 | ... | 242 |

VOL. XIV.

| PAGE. | | PAGE. |
|---|---|---|
| 1 | ... | 291, 906 |
| 6 | ... | 63 |
| 14 | ... | 406, 759 |
| 19 | ... | 675 |
| 27 | ... | 920 |
| 29 | ... | 920, 927 |
| 31 | ... | 306, 921, 934 |
| 35 | ... | 582 |
| 37 | ... | 826 |
| 39 | ... | 138 |
| 57 | ... | 138 |
| 73 | ... | 38, 360 |
| 83 | ... | 282, 406 |
| 88 | ... | 422 |
| 93 | ... | 805 |
| 96 | ... | 176, 282 |
| 100 | ... | 511 |
| 102 | ... | 292, 486 |
| 109 | ... | 495 |
| 152 | ... | 195, 632 |
| 156 | ... | 38, 770 |
| 162 | ... | 406 |
| 171 | ... | 282 |
| 173 | ... | 176 |
| 185 | ... | 389, 433 |
| 195 | ... | 292 |
| 198 | ... | 187, 216 |
| 200 | ... | 138 |
| 206 | ... | 484 |
| 225 | ... | 282, 765 |

*App.*

| PAGE. | | PAGE. |
|---|---|---|
| 21 | ... | 138 |

VOL. XIV.—*Concld.*

| PAGE. | | PAGE. |
|---|---|---|
| 22 | ... | 282, 324, 873 |
| 35 | ... | 468 |
| 37 | ... | 261 |
| 38 | ... | 251, 754 |
| 50 | ... | 869 |
| 54 | ... | 176, 614 |
| 56 | ... | 733 |

VOL. XV.

| PAGE. | | PAGE. |
|---|---|---|
| 3 | ... | 422 |
| 8 | ... | 51 |
| 9 | ... | 203, 648 |
| 11 | ... | 646 |
| 14 | ... | 306 |
| 17 | ... | 128, 138 |
| 21 | ... | 83 |
| 29 | ... | 706 |
| 33 | ... | 138 |
| 40 | ... | 51 |
| 44 | ... | 306 |
| 47 | ... | 292, 886 |
| 63 | ... | 75, 703 |
| 68 | ... | 495 |
| 73 | ... | 809 |
| 81 | ... | 407 |
| 107 | ... | 187, 614 |
| 118 | ... | 139, 437, 573 |
| 127 | ... | 407 |
| 149 | ... | 282 |
| 151 | ... | 633 |
| 176 | ... | 407 |
| 178 | ... | 139, 782 |
| 180 | ... | 139 |

*App.*

| PAGE. | | PAGE. |
|---|---|---|
| 1 | ... | 397, 408 |

## I. The Travancore Law Reports.—*Contd.*


VOL. XV.—*Concld.*

| PAGE. | | PAGE. |
|---|---|---|
| 4 | ... | 423 |
| 49 | ... | 484 |
| 52 | ... | 733 |
| 56 | ... | 517 |

VOL. XVI.

| PAGE. | | PAGE. |
|---|---|---|
| 1 | ... | 63 |
| | | 595 |
| 14 | ... | 890 |
| 15 | ... | 633 |
| 19 | ... | 39 |
| 29 | ... | 809 |
| 31 | ... | 51 |
| 39 | ... | 119 |
| | | 408 |
| 41 | ... | 198 |
| | | 348 |
| 43 | ... | 195 |
| | | 633 |
| 51 | ... | 765 |
| 61 | ... | 257 |
| 68 | ... | 883 |
| 78 | ... | 824 |
| 81 | ... | 219 |
| 85 | ... | 1197 |
| 91 | ... | 423 |
| 103 | ... | 301 |
| 111 | ... | 139 |
| 117 | ... | 641 |
| 135 | ... | 39 |
| 145 | ... | 199 |
| 149 | ... | 246 |
| 155 | ... | 39 |
| 170 | ... | 251 |
| 193 | ... | 496 |
| *App.* | | |
| 1 | ... | 734 |
| 3 | ... | 139 |
| | | 187, 716 |
| 8 | ... | 757 |
| 21 | ... | 734 |
| 29 | ... | 518 |
| 43 | ... | 633 |
| 46 | ... | 550 |
| | | 927 |

VOL. XVII.

| PAGE. | | PAGE. |
|---|---|---|
| 8 | ... | 408 |
| | | 463 |
| 15 | ... | 772 |
| 18 | ... | 76 |
| | | 120 |
| 22 | ... | 496 |
| 82 | ... | 188 |
| 85 | ... | 83 |
| 87 | ... | 506 |
| 88 | ... | 550 |
| 89 | ... | 457 |
| 101 | ... | 242 |
| 110 | ... | 709 |
| 115 | ... | 63 |
| | | 596 |
| 122 | ... | 83 |
| 143 | ... | 306 |
| | | 518 |
| 166 | ... | 139 |
| | | 897 |
| 168 | ... | 268 |
| | | 408 |
| 182 | ... | 120 |
| *App.* | ... | |
| 1 | ... | 519 |
| 3 | ... | 734 |
| 4 | ... | 235 |
| 6 | ... | 718 |
| | | 743 |
| 17 | ... | 634 |
| 20 | ... | 140 |
| | | 782 |
| 23 | ... | 726 |
| 38 | ... | 408 |
| 41 | ... | 140 |
| | | 912 |
| 55 | ... | 266 |

VOL. XVIII.

| PAGE. | | PAGE. |
|---|---|---|
| 1 | ... | 83 |
| | | 634 |
| 3 | ... | 685 |
| 14 | ... | 164 |
| | | 654 |

VOL. XVIII.—*Concld.*

| PAGE. | | PAGE. |
|---|---|---|
| 17 | ... | 251 |
| | | 266 |
| 20 | ... | 76 |
| | | 188 |
| 23 | ... | 934 |
| 29 | ... | 204 |
| 65 | ... | 441 |
| 76 | ... | 83 |
| 79 | ... | 708 |
| 86 | ... | 189 |
| 91 | ... | 129 |
| 111 | ... | 552 |
| 119 | ... | 26 |
| | | 27, 189 |
| 126 | ... | 731 |
| | | 734 |
| 129 | ... | 390 |
| | | 824 |
| 133 | ... | 129 |
| 157 | ... | 52 |
| | | 251, 759 |
| 161 | ... | 292 |
| 164 | ... | 292 |
| 166 | ... | 266 |
| 167 | ... | 957 |
| 179 | ... | 490 |
| 200 | ... | 84 |
| 205 | ... | 614 |
| 212 | ... | 484 |
| 222 | ... | 59, 84 |
| 249 | ... | 676 |
| 252 | ... | 292 |
| | | 408 |

VOL. XIX.

| PAGE. | | PAGE. |
|---|---|---|
| 37 | ... | 519 |
| | | 906 |
| 54 | ... | 120 |
| 59 | ... | 423 |
| 82 | ... | 140 |
| | | 568 |
| 103 | ... | 140 |
| 118 | ... | 734 |
| 165 | ... | 235 |
| 220 | ... | 293 |

VOL. XIX.—*Con*

| PAGE. | | PA |
|---|---|---|
| 223 | ... | |
| 238 | ... | 84, |

VOL. XX.

| PAGE. | | PAGE. |
|---|---|---|
| 1 | ... | |
| 17 | ... | |
| 24 | ... | |
| 28 | ... | |
| 31 | ... | |
| 41 | ... | |
| 54 | ... | |
| 57 | ... | |
| 151 | ... | |
| 165 | ... | |
| 183 | ... | |
| 186 | ... | |
| 203 | ... | |
| 218 | ... | |
| 235 | ... | |
| 239 | ... | |
| 243 | ... | |
| 246 | ... | |
| 255 | ... | |

VOL. XXI.

| PAGE. | | PAGE. |
|---|---|---|
| 1 | ... | 6 |
| 41 | ... | |
| 70 | ... | |
| 127 | ... | |
| 138 | ... | |
| 152 | ... | |
| | | 6 |
| 157 | ... | |
| 159 | ... | |
| 179 | ... | |
| 183 | ... | |
| 191 | ... | |
| 196 | ... | |

## I. The Travancore Law Reports.—*Contd.*


**VOL. XXI.-*Concld.***

| Page. | Page. |
|---|---|
| 206 | 177, 251 |
| 211 | 497 |
| 256 | 63, 457 |

**VOL. XXII.**

| Page. | Page. |
|---|---|
| 1 | 52 |
| 54 | 282 |
| 83 | 148 |
| 143 | 457 |
| 147 | 242, 765 |
| 157 | 26, 424 |
| 172 | 634 |
| 200 | 392, 417, 776 |
| 255 | 85 |
| 262 | 27, 513 |
| 266 | 776 |
| 270 | 64 |

**VOL. XXIII.**

| Page. | Page. |
|---|---|
| 17 | 129 |
| 57 | 177 |
| 80 | 28 |
| 100 | 129 |
| 123 | 497 |
| 142 | 204, 790 |
| 145 | 64, 388 |
| 150 | 409, 484 |
| 165 | 252 |
| 197 | 1197 |
| 214 | 177, 216 |
| 219 | 216, 520 |
| 232 | 578 |
| 245 | 628 |
| 248 | 425 |

**VOL. XXIV.**

| Page. | Page. |
|---|---|
| 12 | 690 |
| 41 | 735 |

**VOL. XXIV.—*Concld.***

| Page. | Page. |
|---|---|
| 49 | 129 |
| 72 | 567 |
| 95 | 469, 605 |
| 100 | 735 |
| 127 | 786 |
| 131 | 779 |
| 169 | 189 |
| 191 | 338 |
| 226 | 520 |
| 228 | 854 |
| 254 | 615 |

**VOL. XXV.**

| Page. | Page. |
|---|---|
| 1 | 293, 791 |
| 19 | 704 |
| 54 | 77 |
| 72 | 843 |
| 77 | 58, 65 |
| 83 | 28, 586 |
| 91 | 901, 938 |
| 101 | 634 |
| 108 | 120 |
| 118 | 66 |
| 123 | 149 |
| 131 | 177 |
| 134 | 205 |
| 154 | 706 |
| 164 | 921 |
| 170 | 294 |
| 176 | 498 |
| 185 | 935 |
| 188 | 771 |
| 239 | 129 |
| 240 | 736 |
| 248 | 760 |

**VOL. XXVI.**

| Page. | Page. |
|---|---|
| 30 | 39 |
| 44 | 142, 411 |
| 58 | 121 |
| 63 | 129, 142 |

**VOL. XXVI.—*Concld.***

| Page. | Page. |
|---|---|
| 67 | 635 |
| 70 | 707 |
| 72 | 21, 864 |
| 83 | 315, 657 |
| 131 | 253, 707 |
| 147 | 718 |
| 162 | 21, 873 |
| 184 | 52, 142 |
| 200 | 99, 935 |
| 207 | 165 |
| 221 | 499 |
| 238 | 641 |
| 239 | 253, 757 |
| 246 | 178 |
| 254 | 710 |

**VOL. XXVII.**

| Page. | Page. |
|---|---|
| 51 | 66 |
| 61 | 21, 355 |
| 70 | 78 |
| 86 | 1198 |
| 92 | 142 |
| 102 | 236 |
| 117 | 593 |
| 118 | 736 |
| 123 | 21, 686 |
| 128 | 87, 150 |
| 138 | 178 |
| 152 | 227 |
| 158 | 129 |
| 161 | 66 |
| 167 | 110 |
| 192 | 470 |
| 217 | 611 |
| 241 | 254 |

**VOL. XXVIII.**

| Page. | Page. |
|---|---|
| 1 | 471, 661 |
| 4 | 277 |
| 36 | 487 |

**VOL. XXVIII.—*Concld.***

| Page. | Page. |
|---|---|
| 51 | 426 |
| 53 | 585 |
| 71 | 880 |
| 87 | 39 |
| 94 | 100 |
| 127 | 206 |
| 129 | 598 |
| 141 | 190 |
| 143 | 263 |
| 148 | 390, 496 |
| 151 | 522, 763 |
| 168 | 855 |
| 170 | 179, 928 |
| 175 | 307 |
| 197 | 316 |
| 209 | 686 |
| 221 | 191, 654 |
| 229 | 87, 779 |
| 232 | 929 |
| 235 | 269 |
| 250 | 48, 53 |

**VOL. XXIX.**

| Page. | Page. |
|---|---|
| 14 | 736 |
| 20 | 889 |
| 22 | 677 |
| 41 | 708 |
| 59 | 66 |
| 63 | 88, 142, 756, 897 |
| 81 | 191, 636 |
| 85 | 412 |
| 102 | 710 |
| 110 | 791 |
| 118 | 766 |
| 125 | 142 |
| 133 | 707 |
| 148 | 485 |
| 166 | 179, 254, 756, 757 |

## I. The Travancore Law Reports.—*Contd.*


VOL. XXIX.—*Concld.*

| Page. | | Page. |
|---|---|---|
| 195 | ... | 269 |
| 200 | ... | 179 |
| 201 | ... | 522 |
| 203 | ... | 766 |
| 204 | ... | 59, 163 |
| | | 166 |
| 223 | ... | 629 |
| 225 | ... | 270 |

VOL. XXX.

| | | |
|---|---|---|
| 5 | ... | 179 |
| 7 | ... | 151 |
| 10 | ... | 142 |
| 46 | ... | 829 |
| 50 | ... | 142 |
| 57 | ... | 196 |
| 85 | ... | 636 |
| 91 | ... | 21, 284 |
| | | 397, 400 |
| 113 | ... | 67 |
| 116 | ... | 412 |
| 171 | ... | 619 |
| 188 | ... | 844 |
| 192 | ... | 737 |
| 197 | ... | 325 |
| | | 813 |
| 205 | ... | 180 |
| | | 767 |
| 211 | ... | 255 |
| 213 | ... | 53 |
| 224 | ... | 68 |
| 228 | ... | 228 |
| 235 | ... | 111 |
| 239 | ... | 357 |
| 245 | ... | 180 |
| 248 | ... | 745 |
| 251 | ... | 412 |
| | | 419, 900 |
| 254 | ... | 718 |

VOL. XXXI.

| | | |
|---|---|---|
| 1 | ... | 68 |
| 9 | ... | 412 |
| 57 | ... | 39 |
| 61 | ... | 119 |
| | | 121, 321 |

VOL. XXXI.—*Concld.*

| Page. | | Page. |
|---|---|---|
| 80 | ... | 427 |
| 83 | ... | 737 |
| 84 | ... | 745 |
| 94 | ... | 263 |
| 104 | ... | 78 |
| 113 | ... | 40 |
| 117 | ... | 70 |
| | | 142 |
| 139 | ... | 929 |
| 155 | ... | 89, 791 |
| 169 | ... | 100 |
| | | 485 |
| 173 | ... | 41 |
| 219 | ... | 131 |
| 228 | ... | 89 |
| 233 | ... | 301 |
| 245 | ... | 398 |
| 250 | ... | 219 |

VOL. XXXII.

| | | |
|---|---|---|
| 6 | ... | 90 |
| 15 | ... | 89, 487 |
| 16 | ... | 419 |
| 19 | ... | 500 |
| 25 | ... | 91 |
| 32 | ... | 92, 294 |
| | | 574 |
| 38 | ... | 101 |
| | | 294 |
| 80 | ... | 21, 930 |
| 97 | ... | 294 |
| 128 | ... | 522 |
| 129 | ... | 72J |
| 130 | ... | 143 |
| 134 | ... | 29, 78 |
| | | 192 |
| 157 | ... | 808 |
| 168 | ... | 104 |
| 190 | ... | 60, 471 |
| | | 818 |
| 211 | ... | 412 |
| | | 457 |
| 235 | ... | 584 |
| 245 | ... | 295 |
| 270 | ... | 236 |

VOL. XXXIII.

| Page. | | Page. |
|---|---|---|
| 23 | ... | 324 |
| | | 326 |
| 56 | ... | 181 |
| | | 196 |
| 59 | ... | 773 |
| 67 | ... | 666 |
| 166 | ... | 167 |
| 197 | ... | 208 |
| | | 236, 263 |
| 234 | ... | 131 |
| 240 | ... | 53 |
| 258 | ... | 599 |
| 281 | ... | 143 |
| | | 600 |
| 284 | ... | 29, 143 |
| | | 912 |
| 299 | ... | 208 |

VOL. XXXIV.

| | | |
|---|---|---|
| 57 | ... | 882 |
| 65 | ... | 662 |
| 68 | ... | 42 |
| 116 | ... | 59, 70 |
| 163 | ... | 255 |
| | | 528 |
| 174 | ... | 450 |
| 178 | ... | 326 |
| 222 | ... | 923 |
| 262 | ... | 922 |
| 281 | ... | 901 |
| 293 | ... | 295 |
| | | 930 |
| 298 | ... | 472 |

VOL. XXXV.

| | | |
|---|---|---|
| 1 | ... | 901 |
| 19 | ... | 168 |
| 30 | ... | 524 |
| 32 | ... | 472 |
| | | 477 |
| 35 | ... | 217 |
| 37 | ... | 143 |
| | | 295 |
| 54 | ... | 693 |
| | | 701 |

VOL. XXXV.—*Concl*

| Pag[e]. | | Pag[e]. |
|---|---|---|
| 75 | ... | 3 |
| | | 506, 7 |
| 80 | ... | 5 |
| | | 7 |
| 113 | ... | 1 |
| 124 | ... | 1 |
| 133 | ... | 21, 2 |
| 146 | ... | 1 |
| 155 | ... | 8 |
| | | 4 |
| 158 | ... | 7 |
| 190 | ... | 1 |
| 206 | ... | 1 |
| 211 | ... | |
| 219 | ... | 2 |
| 221 | ... | 42, 3 |
| 257 | ... | 1 |
| 263 | ... | 3 |
| 360 | ... | 11 |

VOL. XXXVI.

| | | |
|---|---|---|
| 1 | ... | 6 |
| 8 | ... | 7 |
| 12 | ... | 8 |
| 16 | ... | 7 |
| 22 | ... | 1 |
| | | 255, 7 |
| 53 | ... | 1 |
| 56 | ... | 1 |
| | | 287, 2 |
| 97 | ... | 9 |
| 117 | ... | 8 |
| 118 | ... | 3 |
| | | 4 |
| 132 | ... | 3 |
| 174 | ... | |
| 183 | ... | 7 |
| 187 | ... | 72, 1 |
| 190 | ... | 4 |
| 245 | ... | 1 |
| 249 | ... | 8 |
| 253 | ... | 1 |
| | | 11 |
| 261 | ... | 8 |
| 300 | ... | 4 |

## I. The Travancore Law Reports.—*Contd.*


**VOL. XXXVII.**

| PAGE. | | PAGE. |
|---|---|---|
| 1 | ... | 270 |
| 8 | ... | 209 |
| 12 | ... | 902 |
| 16 | ... | 729 |
| 19 | ... | 480 |
| 52 | ... | 182, 768 |
| 63 | ... | 255 |
| 72 | ... | 827 |
| 102 | ... | 850 |
| 106 | ... | 352 |
| 138 | ... | 845 |
| 178 | ... | 264 |
| 186 | ... | 472 |
| 245 | ... | 881 |
| 256 | ... | 480 |
| 274 | ... | 650 |
| 290 | ... | 450, 715 |
| 305 | ... | 264, 686 |

**VOL. XXXVIII.**

| | | |
|---|---|---|
| 1 | ... | 882 |
| 17 | ... | 711 |
| 23 | ... | 34, 238 |
| 27 | ... | 849 |
| 39 | ... | 133 |
| | | 182, 600 |
| 47 | ... | 524 |
| 82 | ... | 182, 746 |
| 90 | ... | 122 |
| 94 | ... | 44 |
| 122 | ... | 572 |
| 129 | ... | 907 |
| 137 | ... | 284 |
| 148 | ... | 739 |
| 157 | ... | 160, 172 |
| 179 | ... | 551, 933 |
| 186 | ... | 93 |
| 189 | ... | 112 |
| 203 | ... | 827 |
| 211 | ... | 739, 748 |
| 217 | ... | 930 |
| 219 | ... | 133 |
| | | 182, 629 |
| 236 | ... | 196 |
| 241 | ... | 616, 739 |
| 245 | ... | 144, 248 |

**VOL. XXXVIII.—*Concld.***

| PAGE. | | PAGE. |
|---|---|---|
| 265 | ... | 883 |
| 274 | ... | 21, 30 |
| 277 | ... | 852 |
| 281 | ... | 295 |
| 288 | ... | 248 |
| 291 | ... | 183 |
| 295 | ... | 1199 |
| 297 | ... | 257 |
| | | 321 |
| 311 | ... | 133 |
| 318 | ... | 650 |

**VOL. XXXIX.**

| | | |
|---|---|---|
| 63 | ... | 525 |
| 78 | ... | 144 |
| 135 | ... | 503 |
| 151 | ... | 923 |
| 163 | ... | 870 |
| 165 | ... | 753 |
| 172 | ... | 874 |
| 196 | ... | 1199 |
| 211 | ... | 160 |
| | | 702, 748 |
| 220 | ... | 120 |
| | | 122 |
| 272 | ... | 846 |

**VOL. XL.**

| | | |
|---|---|---|
| 1 | ... | 145 |
| | | 719 |
| 7 | ... | 145 |
| 11 | ... | 418 |
| 26 | ... | 953 |
| 56 | ... | 787 |
| 127 | ... | 478 |
| 151 | ... | 79, 193 |
| 161 | ... | 770 |
| 181 | ... | 590 |
| 194 | ... | 105 |
| 212 | ... | 238 |
| 222 | ... | 94 |
| 237 | ... | 909 |
| 245 | ... | 720 |
| 303 | ... | 351 |
| 310 | ... | 827 |

**VOL. XLI.**

| PAGE. | | PAGE. |
|---|---|---|
| 1 | ... | 46 |
| 213 | ... | 953 |
| 220 | ... | 72 |
| 232 | ... | 271 |
| 236 | ... | 429 |
| 257 | ... | 829 |
| 285 | ... | 145 |
| 309 | ... | 224 |

**VOL. XLII.**

| | | |
|---|---|---|
| 1 | ... | 458 |
| 9 | ... | 209 |
| 22 | ... | 264 |
| 29 | ... | 21, 146 |
| 58 | ... | 259 |
| 73 | ... | 15, 460 |
| 83 | ... | 46 |
| 128 | ... | 317 |
| | | 458, 491 |
| 134 | ... | 172 |
| 174 | ... | 21, 328 |
| 231 | ... | 96 |
| 243 | ... | 414 |
| 289 | ... | 793 |
| 312 | ... | 152 |
| 318 | ... | 46 |
| 327 | ... | 908 |
| 344 | ... | 600 |
| 348 | ... | 30 |
| 353 | ... | 185 |
| 356 | ... | 689 |
| 362 | ... | 625 |
| 406 | ... | 238 |
| 420 | ... | 153 |
| 429 | ... | 805 |
| 453 | ... | 884 |
| 465 | ... | 133 |
| 468 | ... | 526 |
| 477 | ... | 25 |

**VOL. XLIII.**

| | | |
|---|---|---|
| 28 | ... | 805 |
| 42 | ... | 153 |
| 48 | ... | 585 |
| 52 | ... | 297 |
| 58 | ... | 1444 |

**VOL. XLIII.—*Contd.***

| PAGE. | | PAGE. |
|---|---|---|
| 62 | ... | 1456 |
| 65 | ... | 874 |
| 79 | ... | 1478 |
| 99 | ... | 22, 526 |
| 108 | ... | 59, 79 |
| 120 | ... | 79, 1472 |
| 136 | ... | 154 |
| 148 | ... | 1475 |
| 157 | ... | 429 |
| 161 | ... | 624 |
| 165 | ... | 570 |
| 172 | ... | 1485 |
| 192 | ... | 211 |
| 199 | ... | 1501 |
| 205 | ... | 1476 |
| 209 | ... | 1462 |
| 212 | ... | 298 |
| 237 | ... | 309 |
| 244 | ... | 128 |
| 252 | ... | 694 |
| 255 | ... | 1516 |
| 263 | ... | 852 |
| 268 | ... | 1480 |
| 281 | ... | 1476 |
| 286 | ... | 585 |
| 310 | ... | 22, 96 |
| 317 | ... | 806 |
| 324 | ... | 1458 |
| 326 | ... | 229 |
| 333 | ... | 1460 |
| 344 | ... | 318 |
| | | 468, 475 |
| 353 | ... | 1461 |
| 366 | ... | 866 |
| 379 | ... | 1445 |
| 381 | ... | 1513 |
| 388 | ... | 899 |
| 416 | ... | 264 |
| 419 | ... | 430 |
| | | 480 |
| 423 | ... | 349 |
| 426 | ... | 871 |
| | | 1464 |
| 429 | ... | 712 |
| 434 | ... | 415, 420 |
| 455 | ... | 152 |
| 459 | ... | 297 |

## I. The Travancore Law Reports.—*Concld.*


**VOL. XLIII.—*Concld.***

| PAGE. | | PAGE. |
|---|---|---|
| 461 | ... | 867 |
| 466 | ... | 51, 239 |
| 472 | ... | 342, 345 |

**VOL. XLIV.**

| PAGE. | | PAGE. |
|---|---|---|
| 1 | ... | 551 |
| 11 | ... | 309 |
| | | 1469 |
| 24 | ... | 135 |
| 26 | ... | 1505 |
| 30 | ... | 31, 135 |
| 32 | ... | 185 |
| | | 271, 459 |
| | | 1473 |
| 39 | ... | 1479 |
| 62 | ... | 933 |
| 68 | ... | 1505 |
| 76 | ... | 590 |
| 87 | ... | 117 |
| 99 | ... | 1483 |
| 126 | ... | 1511 |
| 139 | ... | 1502 |
| 141 | ... | 1487 |
| 144 | ... | 1484 |
| 148 | ... | 353 |
| 154 | ... | 1465 |
| 158 | ... | 1445 |

**VOL. XLIV.—*Concld.***

| PAGE. | | PAGE. |
|---|---|---|
| 220 | ... | 604 |
| 233 | ... | 1490 |
| 253 | ... | 172 |
| 275 | ... | 416 |
| 299 | ... | 748 |
| 304 | ... | 1445 |
| 309 | ... | 1465 |
| 315 | ... | 318 |
| | | 903 |
| 320 | ... | 1449 |
| 334 | ... | 478 |
| 339 | ... | 462 |
| 357 | ... | 1501 |
| 367 | ... | 742 |
| 375 | ... | 1483 |
| | | 1488 |
| 386 | ... | 1504 |
| 389 | ... | 1452 |
| 398 | ... | 1500 |
| 404 | ... | 872 |
| 408 | ... | 931 |
| 424 | ... | 185 |
| 428 | ... | 1489 |
| 442 | ... | 834 |
| 855 | ... | 913 |
| 458 | ... | 832 |
| 461 | ... | 1502 |
| 465 | ... | 272 |

**VOL. XLV.**

| PAGE. | | PAGE. |
|---|---|---|
| 1 | ... | 515 |
| 3 | ... | 194 |
| 5 | ... | 1470 |
| 14 | ... | 1457 |
| 15 | ... | 1454 |
| 22 | ... | 1491 |
| 27 | ... | 1474 |
| 44 | ... | 1465 |
| 45 | ... | 1498 |
| 47 | ... | 769 |
| 52 | ... | 1448 |
| 55 | ... | 1507 |
| 58 | ... | 1468 |
| 61 | ... | 1503 |
| 64 | ... | 1498 |
| 67 | ... | 823 |
| 76 | ... | 302 |
| | | 1497 |
| 89 | ... | 1500 |
| 96 | ... | 1515 |
| 103 | ... | 272 |
| | | 1514 |
| 110 | ... | 1493 |
| 112 | ... | 1489 |
| 114 | ... | 299 |
| 252 | ... | 924 |

**VOL. XLV.—C**

| PAGE. | |
|---|---|
| 254 | ... |
| 261 | ... |
| 269 | ... |
| 273 | ... |
| 291 | ... |
| 301 | ... |
| 304 | ... |
| 308 | ... |
| 316 | ... |
| 323 | ... |
| 326 | ... |
| 332 | ... |
| 338 | ... |
| 364 | ... |
| 384 | ... |
| 400 | ... |
| 405 | ... |
| 408 | ... |
| 423 | ... |
| 450 | ... |
| 459 | ... |
| 473 | ... |
| 475 | ... |
| 477 | ... |


## II. The Travancore Law Journal.


**VOL. I.**

| PAGE. | | PAGE. |
|---|---|---|
| 10 | ... | 893 |
| 22 | ... | 165 |
| 33 | ... | 65 |
| 49 | ... | 81 |
| 51 | ... | 58, 65 |
| 59 | ... | 615 |
| 82 | ... | 615 |
| 86 | ... | 190 |
| | | 744 |
| 90 | ... | 354 |

**VOL. I.—*Contd.***

| PAGE. | | PAGE. |
|---|---|---|
| 100 | ... | 293 |
| 150 | ... | 121 |
| 169 | ... | 29 |
| 189 | ... | 257 |
| 191 | ... | 707 |
| 195 | ... | 253 |
| | | 707 |
| 203 | ... | 301 |
| | | 900 |
| 224 | ... | 190 |

**VOL. I.—*Contd.***

| PAGE. | | PAGE. |
|---|---|---|
| 233 | ... | 521 |
| 249 | ... | 597 |
| | | 809 |
| 252 | ... | 293 |
| 265 | ... | 791 |
| 278 | ... | 426 |
| 284 | ... | 21, 315 |
| 322 | ... | 142 |
| | | 411 |
| 358 | ... | 52, 142 |

**VOL. I.—*Co***

| PAGE. | |
|---|---|
| 375 | ... |
| 377 | ... |
| 388 | ... |
| 395 | ... |
| 397 | ... |

**VOL. II.**

| | |
|---|---|
| 1 | ... |
| 5 | ... |

## II. The Travancore Law Journal.—*Contd.*


VOL. II.—*Concld.*

PAGE. ... PAGE.

6 ... 77
19 ... 165
35 ... 499
57 ... 253
63 ... 191
66 ... 710
91 ... 294
97 ... 261
100 ... 205, 262, 618, 623, 706
138 ... 87
145 ... 121, 316, 481
152 ... 39
156 ... 66
163 ... 356
232 ... 21, 686
237 ... 880
263 ... 131
270 ... 21, 855
275 ... 78
280 ... 325
282 ... 262, 704, 766
288 ... 236
291 ... 597
310 ... 87, 150
325 ... 178
332 ... 457
344 ... 110
360 ... 533
362 ... 736
364 ... 29
367 ... 227
377 ... 611
380 ... 257
391 ... 53
393 ... 254
451 ... 277
473 ... 426
478 ... 598

VOL. III.

25 ... 583
41 ... 119, 255

VOL. III.—*Concld.*

PAGE. ... PAGE.

57 ... 100
73 ... 809
74 ... 744
85 ... 487
110 ... 263
120 ... 641
128 ... 522, 763
154 ... 316
160 ... 119, 320
164 ... 191, 654
169 ... 686
191 ... 87, 779
201 ... 929
204 ... 269
209 ... 48, 53
213 ... 206
215 ... 121, 301
223 ... 736
244 ... 897
260 ... 263
263 ... 839
266 ... 677
279 ... 708
282 ... 707
348 ... 150
356 ... 255
362 ... 191, 636
367 ... 412
401 ... 142
409 ... 710
418 ... 791
439 ... 766

VOL. IV.

4 ... 485
7 ... 214, 215
13 ... 179
21 ... 269
35 ... 522

VOL. IV.—*Concld.*

PAGE. ... PAGE.

38 ... 166
54 ... 67
57 ... 843
71 ... 652
73 ... 629
88 ... 163
107 ... 583
109 ... 236
112 ... 522
130 ... 67
137 ... 142
148 ... 142
221 ... 357
227 ... 121
236 ... 636
238 ... 325, 813
261 ... 727
288 ... 559
289 ... 844
293 ... 737
305 ... 21, 284, 397, 400
329 ... 180, 767
342 ... 412
409 ... 150, 619

VOL. V.

23 ... 228
44 ... 745
48 ... 88, 901
55 ... 745
64 ... 58, 69
77 ... 68
90 ... 718
96 ... 710, 723
123 ... 307, 901
128 ... 69
134 ... 68
139 ... 160
176 ... 70

VOL. V.—*Concld.*

PAGE. ... PAGE.

227 ... 39
255 ... 427
289 ... 70, 142
311 ... 40
319 ... 40
324 ... 206
336 ... 89, 791
344 ... 100, 485
351 ... 101, 412
352 ... 119, 121, 321
358 ... 116
366 ... 584
369 ... 41
405 ... 500
441 ... 131
451 ... 89
461 ... 801

VOL. VI.

1 ... 398
22 ... 180
43 ... 90
56 ... 119
60 ... 325
62 ... 500
66 ... 528
77 ... 207
101 ... 101, 294
126 ... 92, 574
133 ... 91
151 ... 700, 704
172 ... 922
197 ... 26, 29, 637
216 ... 143
220 ... 751, 758
243 ... 308
252 ... 694, 695
255 ... 599

## II. The Travancore Law Journal.—*Contd.*


**VOL. VI.—*Concld.***

| PAGE. | | PAGE. |
|---|---|---|
| 283 | ... | 427 |
| 286 | ... | 500 |
| 305 | ... | 471 |
| | | 818 |
| 357 | ... | 70 |
| 378 | ... | 104 |
| 407 | ... | 295 |
| 453 | ... | 1198 |
| 460 | ... | 131 |
| 469 | ... | 616 |
| 474 | ... | 307 |

**VOL. VII.**

| | | |
|---|---|---|
| 6 | ... | 29, 787 |
| 8 | ... | 131 |
| | | 599 |
| 24 | ... | 287 |
| 32 | ... | 412 |
| | | 457 |
| 42 | ... | 236 |
| 89 | ... | 760 |
| 105 | ... | 773 |
| 245 | ... | 599 |
| 276 | ... | 131 |
| | | 196 |
| 280 | ... | 53 |
| 293 | ... | 167 |
| 326 | ... | 143 |
| | | 600 |
| 330 | ... | 666 |
| 367 | ... | 208 |
| | | 236, 263 |
| 381 | ... | 29, 143 |
| | | 912 |
| 390 | ... | 472 |
| 439 | ... | 92 |
| 450 | ... | 192 |

**VOL. VIII.**

| | | |
|---|---|---|
| 1 | ... | 237 |
| 116 | ... | 132 |
| | | 301 |
| 120 | ... | 78, 92 |
| 169 | ... | 42 |
| 199 | ... | 569 |

**VOL. VIII.—*Concld.***

| PAGE. | | PAGE. |
|---|---|---|
| 202 | ... | 181 |
| | | 710 |
| 214 | ... | 390 |
| | | 824 |
| 218 | ... | 59, 70 |
| 284 | ... | 336 |
| 286 | ... | 301 |
| | | 524 |
| 312 | ... | 412 |
| 354 | ... | 677 |
| 382 | ... | 247 |
| 386 | ... | 428 |
| 413 | ... | 774 |
| 472 | ... | 939 |
| 477 | ... | 93 |
| 493 | ... | 428 |

**VOL. IX.**

| | | |
|---|---|---|
| 8 | ... | 348 |
| 19 | ... | 343 |
| 25 | ... | 78 |
| 56 | ... | 192 |
| 95 | ... | 524 |
| 106 | ... | 144 |
| 119 | ... | 715 |
| 134 | ... | 21, 284 |
| 148 | ... | 403 |
| 167 | ... | 168 |
| 217 | ... | 928 |
| 237 | ... | 705 |
| 248 | ... | 827 |
| 256 | ... | 698 |
| | | 701 |
| 267 | ... | 746 |
| 271 | ... | 711 |
| 286 | ... | 193 |
| 308 | ... | 746 |
| 311 | ... | 151 |
| 316 | ... | 767 |
| 323 | ... | 59, 71 |
| 339 | ... | 132 |
| 342 | ... | 829 |
| 400 | ... | 894 |
| 430 | ... | 344 |

**VOL. X.**

| PAGE. | | PAGE. |
|---|---|---|
| 1 | ... | 902 |
| 22 | ... | 93, 792 |
| 31 | ... | 738 |
| 60 | ... | 58, 270 |
| 65 | ... | 887 |
| 69 | ... | 398 |
| 72 | ... | 393 |
| 79 | ... | 284 |
| 85 | ... | 168 |
| 88 | ... | 881 |
| 91 | ... | 144 |
| | | 501, 587 |
| 95 | ... | 677 |
| 99 | ... | 939 |
| 117 | ... | 111 |
| 125 | ... | 642 |
| 133 | ... | 738 |
| 137 | ... | 501 |
| | | 930 |
| 140 | ... | 208 |
| 143 | ... | 72, 121 |
| 154 | ... | 308 |
| 157 | ... | 399 |
| 172 | ... | 327 |
| | | 857 |
| 181 | ... | 792 |
| 243 | ... | 986 |
| 246 | ... | 327 |
| | | 472 |
| 251 | ... | 399 |
| 269 | ... | 524 |
| 271 | ... | 917 |
| 275 | ... | 264 |
| | | 690 |
| 284 | ... | 144 |
| 287 | ... | 881 |
| 292 | ... | 746 |
| 296 | ... | 923 |
| 299 | ... | 880 |
| 309 | ... | 882 |
| 314 | ... | 450 |
| 329 | ... | 105 |
| | | 1198 |
| 336 | ... | 524 |
| 337 | ... | 882 |

**VOL. X.—*Conc***

| PAGE. | | PA |
|---|---|---|
| 338 | ... | 78, |
| 341 | ... | |
| 347 | ... | |
| 367 | ... | |
| 371 | ... | |
| 387 | ... | |
| 420 | ... | |
| 444 | ... | |
| 452 | ... | |
| 459 | ... | |
| 466 | ... | |
| 468 | ... | |

**VOL. XI.**

| | | |
|---|---|---|
| 1 | ... | |
| | | 844, |
| 24 | ... | |
| 36 | ... | |
| 42 | ... | |
| 47 | ... | |
| 65 | ... | |
| 78 | ... | |
| 87 | ... | |
| 91 | ... | |
| 113 | ... | |
| 129 | ... | |
| 136 | ... | |
| 207 | ... | |
| 213 | ... | |
| 229 | ... | |
| 278 | ... | |
| 282 | ... | |
| 285 | ... | |
| 293 | ... | |
| 300 | ... | |
| 343 | ... | |
| 364 | ... | |
| 366 | ... | |
| 381 | ... | |
| 389 | ... | |

## II. The Travancore Law Journal.—*Contd.*


VOL XI.—*Concld.*

| Page. | Page. |
|---|---|
| 398 | 502 |
| | 587, 646 |
| 405 | 882 |
| 411 | 770 |
| 429 | 23 |
| 438 | 182 |
| | 746 |
| 501 | 34, 238 |
| 509 | 524 |

VOL XII.

| Page. | Page. |
|---|---|
| 32 | 457 |
| 34 | 739 |
| 46 | 133 |
| | 182, 629 |
| 53 | 321 |
| 59 | 589 |
| 60 | 907 |
| 70 | 196 |
| 72 | 133 |
| | 182, 600 |
| 82 | 611 |
| 109 | 112 |
| 127 | 284 |
| 151 | 511 |
| | 551 |
| 154 | 502 |
| 160 | 930 |
| 162 | 616 |
| | 789 |
| 167 | 295 |
| 169 | 44 |
| 181 | 144 |
| 189 | 98 |
| 195 | 882 |
| 197 | 248 |
| 204 | 686 |
| 206 | 327 |
| 248 | 849 |
| 262 | 450 |
| | 715 |
| 270 | 144 |
| | 248 |

VOL. XII.—*Concld.*

| Page. | Page. |
|---|---|
| 276 | 711 |
| 278 | 711 |
| 283 | 755 |
| 287 | 160 |
| | 172 |
| 291 | 907 |
| 296 | 21, 30 |
| 299 | 133 |
| 301 | 650 |
| 305 | 870 |
| 311 | 869 |
| 314 | 650 |
| 316 | 218 |
| 359 | 257 |
| | 321 |
| 371 | 525 |
| 403 | 753 |

VOL. XIII.

| Page. | Page. |
|---|---|
| 3 | 144 |
| | 296 |
| 5 | 784 |
| 13 | 864 |
| 22 | 798 |
| 36 | 144 |
| 43 | 589 |
| | 777, 916 |
| 46 | 508 |
| 79 | 183 |
| 82 | 442 |
| 86 | 161 |
| 101 | 507 |
| 104 | 152 |
| 126 | 747 |
| 131 | 122 |
| | 584, 937 |
| 148 | 209 |
| 173 | 122 |
| 177 | 607 |
| 190 | 1199 |
| 204 | 572 |
| 210 | 953 |
| 273 | 418 |
| | 440, 740 |

VOL. XIII.—*Concld.*

| Page. | Page. |
|---|---|
| 307 | 739 |
| 323 | 551 |
| | 933 |
| 330 | 138 |
| 337 | 112 |
| 346 | 758 |
| 349 | 98 |
| 353 | 514 |
| 354 | 296 |
| | 902 |
| 385 | 120 |
| | 122 |
| 392 | 777 |
| 396 | 30, 144 |
| | 912 |
| 405 | 145 |
| 407 | 316 |
| | 481 |
| 409 | 457 |
| | 902 |
| 438 | 264 |
| | 741, 755 |
| 462 | 184 |
| | 198, 747 |
| 479 | 789 |
| 486 | 285 |
| | 413 |
| 507 | 888 |
| 514 | 193 |

VOL. XIV.

| Page. | Page. |
|---|---|
| 22 | 589 |
| 26 | 763 |
| 37 | 835 |
| 51 | 428 |
| 68 | 184 |
| | 700 |
| 80 | 145 |
| 90 | 413 |
| 95 | 1199 |
| 106 | 45 |
| 122 | 97 |
| 134 | 184 |
| 136 | 133 |

VOL. XIV.—*Concld.*

| Page. | Page. |
|---|---|
| 138 | 458 |
| 145 | 248 |
| 147 | 209 |
| 168 | 45, 145 |
| 183 | 327 |
| 186 | 209 |
| 188 | 787 |
| 197 | 145 |
| | 719 |
| 203 | 184 |
| 207 | 160 |
| | 702, 748 |
| 218 | 184 |
| 220 | 296, 525 |
| 267 | 72, 34 |
| | 770 |
| 287 | 458 |
| 296 | 928 |
| 299 | 846 |
| 310 | 413 |
| 313 | 474 |
| 317 | 888 |
| 333 | 720 |
| 341 | 238 |
| 352 | 288 |
| 356 | 184 |
| 363 | 874 |
| 381 | 777 |
| 391 | 152 |
| 393 | 414 |
| 402 | 184 |
| | 619, 880 |
| 410 | 145 |
| | 915, 937 |
| 419 | 590 |
| 452 | 894 |
| 488 | 94, 792 |
| 493 | 258 |
| 501 | 209 |
| 508 | 105 |
| 520 | 72 |
| 543 | 474 |
| 577 | 429 |
| 586 | 567 |

## II. The Travancore Law Journal.—*Contd.*


**VOL. XV.**

| PAGE. | PAGE. |
|---|---|
| 1 | 210 |
| 3 | 145 |
| 30 | 46 |
| 49 | 770 |
| 52 | 909 |
| 79 | 827 |
| 85 | 851 |
| 140 | 98 |
| 167 | 259 |
| 190 | 924 |
| 202 | 600 |
| 226 | 30, 414 |
| 232 | 774 |
| 237 | 271 |
| 248 | 458 |
| 258 | 94 |
| 272 | 255, 720, 741 |
| 293 | 616 |
| 306 | 809 |
| 312 | 638 |
| 322 | 296, 491, 512 |
| 324 | 238 |
| 326 | 317, 458, 481 |
| 352 | 865 |
| 355 | 224 |
| 364 | 248, 712 |
| 368 | 120, 512 |
| 371 | 777 |
| 373 | 296 |
| 379 | 617, 698 |
| 394 | 21, 145, 328 |
| 409 | 116 |
| 412 | 302, 930 |
| 427 | 296, 490 |

**VOL. XV.—*Concld.***

| PAGE. | PAGE. |
|---|---|
| 431 | 193 |
| 434 | 908 |
| 440 | 458, 478 |
| 481 | 328 |
| 518 | 340 |
| 521 | 586 |

**VOL. XVI.**

| PAGE. | PAGE. |
|---|---|
| 10 | 21, 146 |
| 24 | 352, 525 |
| 29 | 324 |
| 68 | 883 |
| 71 | 515 |
| 74 | 957 |
| 76 | 842, 850 |
| 80 | 908 |
| 86 | 55 |
| 110 | 224 |
| 127 | 953 |
| 134 | 30, 293 |
| 143 | 808 |
| 148 | 152 |
| 158 | 46 |
| 173 | 465 |
| 186 | 708 |
| 207 | 94 |
| 221 | 21 |
| 244 | 95 |
| 253 | 908 |
| 264 | 638 |
| 267 | 810 |
| 270 | 30 |
| 275 | 123 |
| 277 | 587 |
| 288 | 805 |
| 326 | 133 |
| 330 | 625 |
| 350 | 152 |
| 354 | 183 |
| 362 | 153 |

**VOL. XVI.—*Concld.***

| PAGE. | PAGE. |
|---|---|
| 369 | 837 |
| 378 | 185 |
| 383 | 617 |
| 387 | 133 |
| 392 | 585 |
| 402 | 741 |
| 403 | 646 |
| 405 | 25 |
| 418 | 152 |
| 430 | 849 |
| 431 | 503 |
| 449 | 526 |
| 481 | 822 |
| 488 | 238 |
| 499 | 451 |
| 501 | 390 |
| 510 | 753 |
| 517 | 474 |
| 545 | 394 |
| 550 | 72, 95 |
| 595 | 884 |
| 608 | 123 |
| 624 | 352 |

**VOL. XVII.**

| PAGE. | PAGE. |
|---|---|
| 1 | 297 |
| 15 | 585 |
| 26 | 763 |
| 28 | 297 |
| 31 | 1478 |
| 51 | 1466 |
| 52 | 1490 |
| 73 | 46 |
| 90 | 172 |
| 95 | 194, 590 |
| 121 | 712 |
| 125 | 95, 329 |
| 130 | 585 |
| 146 | 1488 |
| 158 | 777 |
| 161 | 318, 468, 475 |

**VOL. XVI**

| PAGE. | |
|---|---|
| 178 | .. |
| 184 | .. |
| 189 | .. |
| 218 | .. |
| 229 | .. |
| 255 | .. |
| 262 | .. |
| 276 | .. |
| 286 | .. |
| 295 | .. |
| 298 | .. |
| 301 | ... |
| 306 | .. |
| 308 | .. |
| 311 | .. |
| 342 | . |
| 345 | .. |
| 356 | .. |
| 381 | .. |
| 393 | . |
| 398 | . |
| 402 | . |
| 408 | .. |
| 415 | . |
| | 1 |
| 424 | . |
| 428 | . |
| 436 | . |
| 441 | . |
| 445 | . |
| 451 | . |
| 455 | . |
| 458 | . |
| 477 | . |
| 480 | . |
| 502 | . |
| 506 | . |
| 510 | . |
| 517 | . |
| 523 | |

## II. The Travancore Law Journal.—*Contd.*


VOL. XVII.—*Contd.*

| PAGE. | PAGE. |
|---|---|
| 530 | 1482 |
| 534 | 1476 |
| 538 | 210 |
| 541 | 1501 |
| 566 | 264 |
| 571 | 1444 |
| 593 | 59, 79 |
| 604 | 337 |
| 606 | 1471 |
| 608 | 950 |
| 610 | 1460 |
| 620 | 877 |
| 623 | 134 |
| 625 | 694 |
| 629 | 429 |
| 633 | 1450 |
| 642 | 55 |
| 644 | 22 |
| | 526 |
| 653 | 152 |
| 657 | 1460 |
| 662 | 1458 |
| 664 | 1451 |
| 667 | 1450 |
| 675 | 1456 |
| 679 | 357 |
| 688 | 460 |
| | 805 |
| 693 | 551 |
| 704 | 556 |
| 711 | 899 |
| 737 | 1488 |
| 740 | 1460 |
| 743 | 1449 |
| 755 | 617 |
| 758 | 342 |
| | 345 |
| 767 | 153 |
| 769 | 124 |
| 774 | 211 |
| 780 | 924 |
| 781 | 1453 |
| 790 | 1451 |

VOL. XVII.—*Contd.*

| PAGE. | PAGE. |
|---|---|
| 793 | 134 |
| 813 | 1480 |
| 816 | 1445 |
| 819 | 1476 |
| 822 | 1463 |
| 836 | 1461 |
| 853 | 753 |
| 857 | 460 |
| 865 | 1455 |
| 870 | 135 |
| 874 | 1476 |
| 879 | 51 |
| | 239 |
| 899 | 1454 |
| 906 | 1446 |
| 908 | 1445 |
| 911 | 22 |
| | 1458 |
| 926 | 652 |
| 928 | 1461 |

VOL. XVIII.

| PAGE. | PAGE. |
|---|---|
| 1 | 624 |
| 5 | 229 |
| 23 | 1465 |
| 35 | 1447 |
| 38 | 1457 |
| 41 | 1481 |
| 43 | 1444 |
| 47 | 1472 |
| 52 | 329 |
| 65 | 322 |
| 68 | 135 |
| 71 | 1466 |
| 73 | 504 |
| 74 | 874 |
| 76 | 219 |
| 78 | 1498 |
| 81 | 600 |
| 85 | 639 |
| 119 | 1458 |
| 123 | 1469 |
| 124 | 1452 |

VOL. XVIII.—*Contd.*

| PAGE. | PAGE. |
|---|---|
| 128 | 1457 |
| 131 | 1454 |
| 140 | 211 |
| 163 | 1484 |
| 167 | 504 |
| 171 | 1461 |
| 173 | 1464 |
| 175 | 931 |
| 185 | 590 |
| 194 | 821 |
| 200 | 31 |
| 203 | 1466 |
| 207 | 691 |
| 213 | 430 |
| | 480 |
| 217 | 211 |
| 224 | 288 |
| 227 | 1451 |
| 234 | 1469 |
| 236 | 1477 |
| 247 | 1495 |
| 254 | 31, 135 |
| 261 | 1485 |
| 266 | 504 |
| 284 | 1478 |
| 286 | 1451 |
| 288 | 1449 |
| 301 | 458 |
| | 908 |
| 308 | 1473 |
| 315 | 431 |
| 326 | 154 |
| 342 | 1448 |
| 350 | 1464 |
| 359 | 794 |
| 384 | 22 |
| | 1453 |
| | 1458 |
| 430 | 712 |
| 449 | 459, 526 |
| 459 | 1467 |
| 466 | 1468 |
| 468 | 1446 |

VOL. XVIII.—*Contd.*

| PAGE. | PAGE. |
|---|---|
| 471 | 135, 271, 459, 1473 |
| 478 | 154 |
| 482 | 1489 |
| 485 | 155 |
| | 712 |
| 505 | 172 |
| 515 | 601 |
| 527 | 136 |
| 530 | 225 |
| 541 | 478 |
| 555 | 1488 |
| 575 | 1479 |
| 600 | 1496 |
| 609 | 1473 |
| 614 | 611 |
| 615 | 1467 |
| 617 | 1467 |
| 621 | 1446 |
| 623 | 1466 |
| 627 | 1453 |
| 632 | 756 |
| 634 | 1508 |
| 640 | 289 |
| 651 | 677 |
| 655 | 334 |
| 668 | 155 |
| 671 | 402 |
| | 415 |
| 684 | 1484 |
| 687 | 1469 |
| 690 | 1487 |
| 694 | 871 |
| | 1464 |
| 698 | 212 |
| 701 | 1494 |
| 709 | 746 |
| 726 | 22, 678 |
| 736 | 416 |
| 766 | 1473 |
| 772 | 136 |
| 780 | 620 |

## II. The Travancore Law Journal.—*Contd.*


**VOL. XVIII.—*Contd.***

| Page. | | Page. |
|---|---|---|
| 788 | ... | 1448 |
| 792 | ... | 212 |
| 816 | ... | 644, 871 |
| 832 | ... | 1492 |
| 834 | ... | 1493 |
| 836 | ... | 551 |
| 838 | ... | 1490 |
| 847 | ... | 1486 |
| 851 | ... | 72 |
| 855 | ... | 842, 346 |
| 868 | ... | 1455 |
| 880 | ... | 155 |
| 891 | ... | 748 |
| 894 | ... | 43[illegible] |
| 899 | ... | 309 |
| 906 | ... | 155 |
| | | 1199 |
| 915 | ... | 699 |
| 920 | ... | 1474 |
| 926 | ... | 1465 |
| 932 | ... | 1465 |
| 937 | ... | 1456 |
| 939 | ... | 1465 |
| 940 | ... | 1448 |
| 952 | ... | 748 |
| 961 | ... | 864 |
| 963 | ... | 749 |
| 966 | ... | 871 |
| 968 | ... | 352 |
| 971 | ... | 1445 * |
| 982 | ... | 1468 |
| 990 | ... | 954 |
| 992 | ... | 450 |
| 996 | ... | 318 |
| | | 903 |
| 1001 | ... | 159 |
| | | 160, 645 |
| 1007 | ... | 353 |
| 1016 | ... | 924 |
| 1017 | ... | 556 |
| 1019 | ... | 1482 |
| 1024 | ... | 1482 |

**VOL. XVIII.—*Concld.***

| Page. | | Page. |
|---|---|---|
| 1028 | ... | 1483 |
| | | 1488, 1491 |
| 1054 | ... | 1500 |
| 1068 | ... | 1466 |
| 1071 | ... | 1458 |
| 1075 | ... | 1445 |
| 1079 | ... | 1468 |
| 1081 | ... | 933 |
| 1088 | ... | 777 |
| 1096 | ... | 1448 |
| 1104 | ... | 1452 |
| 1129 | ... | 1456 |
| 1131 | ... | 1467 |
| 1133 | ... | 462 |
| 1162 | ... | 742 |
| 1171 | ... | 118 |
| 1175 | ... | 322 |
| 1182 | ... | 950 |
| 1185 | ... | 1501 |
| 1195 | ... | 867 |
| 1196 | ... | 117 |
| 1210 | ... | 322 |
| 1216 | ... | 639 |
| 1224 | ... | 196 |
| 1226 | ... | 931 |
| 1244 | ... | 1505 |
| 1249 | ... | 285 |
| 1253 | ... | 329 |
| 1255 | ... | 1456 |
| 1276 | ... | 31, 349 |
| 1280 | ... | [illegible]85 |
| 1284 | ... | 834 |
| 1287 | ... | 758 |
| | | 1453 |
| 1291 | ... | 244 |
| 1296 | ... | 272 |
| 1324 | ... | 1474 |
| 1330 | ... | 1455 |
| 1332 | ... | 1504 |
| 1336 | ... | 1504 |
| 1339 | ... | 1479 |
| 1342 | ... | 754 |

**VOL. XIX.**

| Page. | | Page. |
|---|---|---|
| 1 | ... | 778 |
| 5 | ... | 784 |
| 15 | ... | 604 |
| 28 | ... | 1502 |
| 30 | ... | 1452 |
| 32 | ... | 1453 |
| 41 | ... | 1486 |
| 52 | ... | 1470 |
| 61 | ... | 1513 |
| 65 | ... | 1489 |
| 80 | ... | 1457 |
| 82 | ... | 1514 |
| 90 | ... | 823 |
| 99 | ... | 1480 |
| 105 | ... | 1505 |
| 109 | ... | 1505 |
| 113 | ... | 239 |
| | | 1496 |
| 120 | ... | 194 |
| 123 | ... | 1448 |
| 126 | ... | 1467 |
| 134 | ... | 461 |
| | | 1510 |
| 150 | ... | 913 |
| 153 | ... | 394 |
| 156 | ... | 1474 |
| 170 | ... | 466 |
| 181 | ... | 302 |
| | | 1497 |
| 195 | ... | 416 |
| 198 | ... | 780 |
| 201 | ... | 272 |
| 204 | ... | 162 |
| 207 | ... | 515 |
| 209 | ... | 1455 |
| 210 | ... | 1513 |
| 214 | ... | 1500 |
| 221 | ... | 1456 |
| 224 | ... | 1504 |
| 230 | ... | 1500 |
| 236 | ... | 353 |
| 241 | ... | 55 |

**VOL. XIX.**

| Page. | |
|---|---|
| 248 | ... |
| 253 | ... |
| 257 | ... |
| 264 | ... |
| 269 | ... |
| 271 | ... |
| 274 | ... |
| 275 | ... |
| 285 | ... |
| 292 | ... |
| 297 | ... |
| 300 | ... |
| 303 | ... |
| 318 | ... |
| 320 | ... |
| 322 | ... |
| 328 | ... |
| 333 | ... |
| 345 | ... |
| 349 | ... |
| 356 | ... |
| 360 | ... |
| 363 | ... |
| 365 | ... |
| 368 | ... |
| 372 | ... |
| 375 | ... |
| 378 | ... |
| 381 | ... |
| 383 | ... |
| 396 | ... |
| 399 | ... |
| 401 | ... |
| 402 | ... |
| 405 | ... |
| 406 | ... |
| 408 | ... |
| 411 | ... |
| 414 | ... |
| 415 | ... |
| 421 | ... |
| 428 | ... |


* 18 T. L. J., 971 = 44 T. L. R., 158.

## II. The Travancore Law Journal.—*Concld.*


VOL. XIX.—*Contd.*

| Page. | | Page. |
|---|---|---|
| 435 | ... | 1507 |
| 439 | ... | 639 |
| 453 | ... | 299 |
| 455 | ... | 581 |
| 457 | ... | 1454 |
| 459 | ... | 647 |
| 469 | ... | 1495 |
| 481 | ... | 700 |
| 488 | ... | 1507 |
| 491 | ... | 712 |
| 510 | ... | 81, 488 |
| 519 | ... | 647 |
| 521 | ... | 195 |
| 524 | ... | 651 |
| 530 | ... | 713 |
| 538 | ... | 617 |
| 541 | ... | 272 |
| 549 | ... | 783 |
| 555 | ... | 1504 |
| 558 | ... | 1502 |
| 581 | ... | 1507 |
| 589 | ... | 1463 |
| 598 | ... | 885 |
| 602 | ... | 31, 299 |
| 603 | ... | 299 |
| 605 | ... | 1489 |
| 608 | ... | 794 |
| 621 | ... | 312 |
| 624 | ... | 1515 |
| 627 | ... | 195 |
| 632 | ... | 56 |
| 638 | ... | 1465 |
| 641 | ... | 1468 |
| 643 | ... | 322 |
| | | 506 |
| 648 | ... | 155 |
| 649 | ... | 175 |
| | | 185 |
| 673 | ... | 788 |
| 681 | ... | 729 |

VOL. XIX.—*Contd.*

| Page. | | Page. |
|---|---|---|
| 684 | ... | 841 |
| 690 | ... | 444 |
| 691 | ... | 353 |
| 698 | ... | 572 |
| 702 | ... | 504 |
| 710 | ... | 617 |
| 713 | ... | 1485, 1486, 1501 |
| 722 | ... | 695 |
| 726 | ... | 156 |
| 731 | ... | 289 |
| 740 | ... | 957 |
| 743 | ... | 96 |
| 748 | ... | 692, 865 |
| 751 | ... | 31 |
| 752 | ... | 157 |
| 758 | ... | 1487 |
| 760 | ... | 1474 |
| 777 | ... | 1499 |
| 780 | ... | 196 |
| 782 | ... | 54 |
| 803 | ... | 197 |
| 806 | ... | 1499 |
| 811 | ... | 1495 |
| 814 | ... | 591 |
| 820 | ... | 601 |
| 828 | ... | 1460 |
| 839 | ... | 1514 |
| 843 | ... | 1510 |
| 851 | ... | 239 |
| 855 | ... | 1455 |
| 857 | ... | 1504 |
| 861 | ... | 910 |
| 865 | ... | 33, 322 |
| 867 | ... | 526 |
| 873 | ... | 1495 |
| 876 | ... | 299 |
| 878 | ... | 1498 |
| 882 | ... | 239 |

VOL. XIX.—*Contd.*

| Page. | | Page. |
|---|---|---|
| 884 | ... | 832 |
| 885 | ... | 1485 |
| 889 | ... | 1495 |
| 898 | ... | 23, 1505 |
| 906 | ... | 218 |
| 917 | ... | 1516 |
| 920 | ... | 431 |
| 924 | ... | 312 |
| 928 | ... | 1493 |
| 930 | ... | 1505 |
| 937 | ... | 299 |
| | | 1489 |
| 940 | ... | 1517 |
| 952 | ... | 924 |
| 954 | ... | 1497 |
| 956 | ... | 1513 |
| 962 | ... | 197 |
| 973 | ... | 1475 |
| 976 | ... | 1515 |
| 979 | ... | 214 |
| 984 | ... | 542 |
| 988 | ... | 1489 |
| 991 | ... | 853 |
| 994 | ... | 1497 |
| 998 | ... | 758 |
| 1013 | ... | 157 |
| 1016 | ... | 897 |
| 1021 | ... | 825 |
| 1024 | ... | 904 |
| 1042 | ... | 1447 |
| 1044 | ... | 1511 |
| 1071 | .. | 872 |
| 1086 | ... | 416 |
| 1089 | ... | 1521 |
| 1092 | ... | 1449 |
| 1095 | ... | 1514 |
| 1102 | ... | 527 |
| 1106 | ... | 1515 |
| 1113 | ... | 641 |
| 1133 | ... | 1526 |

VOL. XIX.—*Concld.*

| Page. | | Page. |
|---|---|---|
| 1135 | ... | 954 |
| 1136 | ... | 1516 |
| 1138 | ... | 1521 |
| 1139 | ... | 1470 |
| 1142 | ... | 1504 |
| 1152 | ... | 1520 |
| 1158 | ... | 1493 |
| 1160 | ... | 885 |
| 1162 | ... | 1518 |
| 1190 | ... | 1494 |
| 1194 | ... | 1526 |
| 1201 | ... | 1522 |
| 1225 | ... | 854 |
| 1228 | ... | 1521 |
| 1231 | ... | 557 |
| 1233 | ... | 1511 |
| 1255 | ... | 1526 |
| 1273 | ... | 1512 |
| 1279 | ... | 1524 |
| 1294 | ... | 1496 |
| 1297 | ... | 1451 |
| 1298 | ... | 1503 |
| 1316 | ... | 1485 |
| 1321 | ... | 1484 |
| 1322 | ... | 846 |
| 1324 | ... | 803 |
| | | 958 |
| 1327 | ... | 1507 |
| 1330 | ... | 1505 |
| 1338 | .. | 1519 |
| 1340 | ... | 1498 |
| 1345 | ... | 1523 |
| 1353 | ... | 932 |
| 1361 | .. | 1451 |
| | | 1483 |
| 1365 | ... | 1508 |
| 1369 | ... | 1499 |
| 1383 | ... | 1519 |
| 1394 | ... | 1444 |
| 1402 | ... | 1457 |

## III. Select Unreported Decisions.

*(Thandu Iyer's.)*


**VOL. I.**

| Page. | | Page. |
|---|---|---|
| 1 | ... | 700 |
| 21 | ... | 140 |
| 23 | ... | 283, 498 |
| 37 | ... | 269 |
| 39 | ... | 434, 438 |
| 44 | ... | 119, 288 |
| 60 | ... | 488 |
| 64 | ... | 130, 605, 921 |
| 73 | ... | 119, 833 |
| 78 | ... | 487 |
| 86 | ... | 198 |
| 90 | ... | 596 |
| 112 | ... | 409 |
| 135 | ... | 425 |
| 185 | ... | 646 |
| 190 | ... | 750 |
| 194 | ... | 343 |
| 196 | ... | 596 |
| 204 | ... | 776 |
| 210 | ... | 252 |
| 235 | ... | 140, 409 |
| 260 | ... | 826 |
| 264 | ... | 85 |
| 270 | ... | 269 |
| 273 | ... | 269 |
| 277 | ... | 59 |
| 285 | ... | 848 |
| 290 | ... | 886 |
| 292 | ... | 790 |
| 295 | ... | 762 |
| 302 | ... | 568 |
| 309 | ... | 434, 469 |
| 337 | ... | 773 |
| 339 | ... | 409 |
| 342 | ... | 409 |
| 344 | ... | 765 |
| 346 | ... | 928 |

**VOL. I.—Concld.**

| Page. | | Page. |
|---|---|---|
| 348 | ... | 801 |
| 349 | ... | 195, 520 |
| 352 | ... | 915 |
| 356 | ... | 744 |

**VOL. II.**

| | | |
|---|---|---|
| 40 | ... | 64 |
| 46 | ... | 205 |
| 55 | ... | 86 |
| 59 | ... | 392 |
| 61 | ... | 52 |
| 62 | ... | 86 |
| 69 | ... | 805, 809 |
| 76 | ... | 252 |
| 79 | ... | 826 |
| 81 | ... | 469 |
| 85 | ... | 409 |
| 94 | ... | 140, 893 |
| 105 | ... | 86, 498 |
| 119 | ... | 498 |
| 135 | ... | 805 |
| 141 | ... | 189 |
| 150 | ... | 198 |
| 157 | ... | 426 |
| 165 | ... | 477 |
| 185 | ... | 198 |
| 188 | ... | 130, 486, 499 |
| 196 | ... | 567 |
| 197 | ... | 921 |
| 199 | ... | 795 |
| 218 | ... | 736 |
| 236 | ... | 195 |
| 237 | ... | 410 |
| 240 | ... | 736 |
| 243 | ... | 928 |
| 247 | ... | 513 |
| 249 | ... | 189, 320 |
| 252 | ... | 848 |

**VOL. II.—Concld.**

| Page. | | Page. |
|---|---|---|
| 256 | ... | 786 |
| 258 | ... | 392, 435 |
| 261 | ... | 100 |
| 264 | ... | 520 |
| 266 | ... | 410 |
| 269 | ... | 709, 752 |
| 271 | ... | 955 |
| 274 | ... | 410 |
| 379 | ... | 667, 669 |

**VOL. III.**

| | | |
|---|---|---|
| 9 | ... | 190, 658 |
| 11 | ... | 796 |
| 17 | ... | 906, 921 |
| 20 | ... | 763 |
| 24 | ... | 283 |
| 40 | ... | 410 |
| 43 | ... | 252 |
| 54 | ... | 410 |
| 61 | ... | 76, 252 |
| 66 | ... | 130 |
| 75 | ... | 763 |
| 79 | ... | 140 |
| 82 | ... | 130 |
| 96 | ... | 130 |
| 102 | ... | 551 |
| 107 | ... | 426 |
| 114 | ... | 140, 499 |
| 158 | ... | 235 |
| 173 | ... | 149, 789 |
| 178 | ... | 205 |
| 187 | ... | 252 |
| 190 | ... | 141, 588 |
| 195 | ... | 86 |
| 199 | ... | 141 |

**VOL. III.—C**

| Page. | | |
|---|---|---|
| 212 | ... | |
| 215 | ... | |
| 218 | ... | |
| 224 | ... | |
| 226 | ... | |
| 249 | ... | |
| 276 | ... | |
| 280 | ... | |
| 287 | ... | |
| 290 | ... | |
| 293 | ... | |
| 295 | ... | |
| 299 | ... | |

**VOL. IV.**

| | | |
|---|---|---|
| 7 | ... | |
| 25 | ... | |
| 32 | ... | |
| 44 | ... | |
| 49 | ... | |
| 51 | ... | |
| 54 | ... | |
| 57 | ... | |
| 63 | ... | |
| 66 | ... | |
| 68 | ... | |
| 69 | ... | |
| 72 | ... | |
| 73 | ... | |
| 87 | ... | |
| 89 | ... | |
| 94 | ... | |
| 99 | ... | |
| 102 | ... | |
| 112 | ... | |
| 116 | ... | |
| 130 | ... | |
| 133 | ... | |
| 136 | ... | |
| 140 | ... | |

## III. Select Unreported Decisions.—*Concld.*


VOL. IV.—*Contd.*

| PAGE. | PAGE. |
|---|---|
| 144 | 1489 |
| 161 | 1471 |
| 169 | 76 |
| | 1517 |
| 186 | 1469 |
| 188 | 627 |
| 194 | 1518 |
| 200 | 178 |
| 202 | 1519 |
| 227 | 596 |
| 246 | 635 |
| 258 | 190 |
| 261 | 513 |
| 271 | 1489 |
| 273 | 204 |
| 276 | 635 |
| 278 | 1492 |
| 281 | 1469 |
| 292 | 635 |
| 294 | 1471 |
| 298 | 1525 |
| 300 | 1521 |
| 310 | 1520 |
| 322 | 1489 |
| 325 | 1471 |
| 331 | 1501 |
| 343 | 1519 |
| 349 | 1475 |
| 352 | 1492 |
| 355 | 337 |
| 357 | 1518 |
| 359 | 1475 |
| 369 | 1522 |
| 370 | 1526 |
| 372 | 1492 |
| 373 | 411 |
| 376 | 1524 |
| 378 | 1492 |
| 380 | 655 |
| 383 | 1519 |
| 386 | 1525 |
| 391 | 1468 |
| 392 | 1458 |
| 393 | 1458 |
| 398 | 1482 |
| 399 | 1484 |
| 400 | 1483 |
| 401 | 1445 |
| 402 | 1455 |
| 403 | 1482 |
| 405 | 1463 |
| 407 | 1490 |
| 409 | 1468 |
| 410 | 1457 |
| 415 | 1482 |
| 416 | 1481 |
| 424 | 1482 |
| 426 | 1481 |


## IV. Important Unreported Decisions.

(*Kolappa Pillay's.*)


| PAGE. | PAGE. |
|---|---|
| 3 | 1197 |
| 40 | 141 |
| 95 | 704 |
| 96 | 347 |
| 99 | 861 |
| 102 | 141 |
| 135 | 499 |
| 159 | 141 |
| 222 | 796 |
| 223 | 796 |
| 224 | 796 |
| 236 | 325 |
| 247 | 28 |
| 257 | 437, 470 |
| 260 | 715 |
| 263 | 754 |
| 266 | 567 |
| 267 | 796 |
| 268 | 235 |
| | 253 |
| 270 | 52 |
| 271 | 121 |
| | 325 |
| 273 | 776 |
| 281 | 76, 597 |
| 287 | 52 |
| 296 | 661 |
| 303 | 704 |
| 307 | 780 |
| 323 | 141 |
| 347 | 141 |
| 368 | 411 |
| 379 | 499 |
| 387 | 110 |
| 402 | 64 |
| 441 | 149 |
| 453 | 85 |
| 455 | 223 |
| | 225, 851 |
| 474 | 307 |
| 475 | 470 |
| 481 | 393 |
| 488 | 307 |
| 496 | 393 |
| | 470 |
| 533 | 141 |
| 556 | 521 |
| 558 | 293 |
| 563 | 716 |
| 566 | 130 |
| 567 | 130 |
| 578 | 59, 65 |
| 584 | 236, 253 |
| | 393, 658 |

# Regulations and Proclamations

OF

# TRAVANCORE.

## REGULATION VIII OF 1100. †

## THE CIVIL PROCEDURE CODE.

CONTENTS.

### Preliminary.

Sections.


1. Short title, commencement and extent.
2. Definitions.
3. Subordination of Courts.
4. Savings.
5. Pecuniary jurisdiction.
6. Provisions inapplicable to suits tried as Small Causes.


PART I.

### Suits in General.

*Jurisdiction of the Courts and Res Judicata.*


7. Courts to try all civil suits unless barred.
8. Suits relating to pensions, Kandukrishi, Viruthi or Service Inam lands.
9. Stay of suit.
10. *Res Judicata.*
11. Bar to further suit.
12. When foreign judgment not conclusive.
13. Presumption as to foreign judgments.


*Place of Suing.*


14. Court in which suits to be instituted.
15. Suits to be instituted where subject-matter situate.


† Amended by Regulations X of 1100 and III of 1101.

Sections.

**16.** Suits for immovable property situate within jurisdiction of different Courts.

**17.** Place of institution of suits where local limits of jurisdiction of Courts are uncertain.

**18.** Suits for compensation for wrongs to person or movables.

**19.** Other suits to be instituted where defendants reside or cause of action arises.

**20.** Objections to jurisdiction.

**21.** Power to transfer suits which may be instituted in more than one Court.

**22.** To what Court application lies.

**23.** General power of transfer and withdrawal.

*Institution of Suits.*

**24.** Institution of suits.

*Summons and Discovery.*

**25.** Summons to defendant.

**26.** Service of foreign summonses.

**27.** Power to order discovery and the like

**28.** Summons to witness.

**29.** Penalty for default.

*Judgment and Decree.*

**30.** Judgment and decree.

*Interest.*

**31.** Interest.

*Costs.*

**32.** Costs.

PART II.

**Execution.**

*General.*

**33.** Application to orders.

**34.** Definition of Court which passed a decree.

*Courts by which decrees may be executed.*

**35.** Court by which decree may be executed.

**36.** Transfer of decree.

**37.** Result of execution proceedings to be certified.

**38.** Powers of Court in executing transferred decree.

**39.** Precepts.

*Questions to be determined by Courts executing decree.*

Sections.

40. Questions to be determined by the Court executing decree.

*Limit of time for execution.*

41. Execution barred in certain cases.

*Transferees and legal representatives.*

42. Transferee.
43. Legal representative.

*Procedure in execution.*

44. Powers of Court to enforce execution.
45. Enforcement of decree against legal representative.
46. Partition of estate or separation of share.

*Arrest and Detention.*

47. Arrest and detention.
48. Prohibition of arrest or detention of women in execution of decree for money.
49. Subsistence allowance.
50. Detention and release.
51. Release on ground of illness.

*Attachment.*

52. Property liable to attachment and sale in execution of decree.
53. Partial exemption of agricultural produce.
54. Seizure of property in dwelling-house.
55. Property attached in execution of decrees of several Courts.
56. Private alienation of property after attachment to be void.

*Sale.*

57. Purchaser's title.
58. Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff.

*Distribution of assets.*

59. Proceeds of execution sale to be rateably distributed among decree-holders.

*Resistance to execution.*

60. Resistance to execution.

PART III.

**Incidental Proceedings.**

*Commissions.*

61. Power of Court to issue commissions.

Sections.

**62.** Letter of request.

**63.** Commissions issued by foreign Courts.

## PART IV.

### Suits in Particular Cases.

*Suits by or against the Government or Public Officers in their official capacity.*

**64.** Suits by or against Government.

**65.** Notice.

**66.** Exemption from arrest and personal appearance.

**67.** Execution of decree.

*Interpleader.*

**68.** Where interpleader suit may be instituted.

## PART V.

### Special Proceedings.

*Arbitration.*

**69.** Arbitration.

*Special Case.*

**70.** Power to state case for opinion of Court.

*Suits relating to Public Matters.*

**71.** Public nuisances.

**72.** Public charities.

**73.** Regulation III of 1079.

## PART VI.

### Supplemental Proceedings.

**74.** Supplemental proceedings.

**75.** Compensation for obtaining arrest, attachment or injunction on insufficient grounds.

## PART VII.

### Appeals.

*Appeals from Original Decrees.*

**76.** Appeal from original decree.

**77.** Appeal from final decree where no appeal from preliminary decree.

Sections.

78. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.

*Appeals from Appellate Decrees.*

79. Second appeal.

80. Second appeal on no other grounds.

81. Power of High Court to determine issues of fact.

*Appeals from Orders.*

82. Orders from which appeal lies.

83. Other orders.

84. What Courts to hear appeals.

*General Provisions relating to Appeals.*

85. Powers of Appellate Court.

86. Procedure in appeals from appellate decrees and orders.

PART VIII.

**Reference, Review and Revision.**

87. Reference to High Court.

88. Review.

89. Revision.

PART IX.

**Rules.**

90. Effect of rules in First Schedule.

91. Power of High Court to make Rules.

92. Constitution of Rule Committee.

93. Reference to Rule Committee.

94. Rules to be laid before the Legislative Council.

95. Rules subject to sanction, and publication of Rules.

96. Matters for which Rules may provide.

PART X.

**Miscellaneous.**

97. Exemption of certain women from personal appearance.

98. Exemption of other persons.

99. Arrest other than in execution of decree.

100. Exemption from arrest under civil process.

101. Procedure where person to be arrested or property to be attached is outside district.

Sections.

102. Language of Courts.
103. Oath on affidavit by whom to be administered.
104. Assessors in causes of salvage, etc.
105. Miscellaneous proceedings.
106. Orders and notices to be in writing.
107. Postage.
108. Application for restitution.
109. Enforcement of liability of surety.
110. Proceedings by or against representatives.
111. Consent or agreement by persons under disability.
112. Enlargement of time.
113. Power to make up deficiency of Court fees.
114. Transfer of business.
115. Saving of inherent powers of Court.
116. Amendment of judgments, decrees or orders.
117. General power to amend.
118. Saving of present right of appeal.
119. Repeals.
120. Continuance of orders under repealed enactments.
121. Reference to Code of Civil Procedure and other repealed enactments.
122. Procedure in suits and appeals to which Edappalli Chief is a party.
123. Arrest of Palace officers and servants.

---

## Schedules.

THE FIRST SCHEDULE.—Rules of Procedure.

Appendix A.—Pleadings.
Appendix B.—Process.
Appendix C.—Discovery, Inspection and Admission.
Appendix D.—Decrees.
Appendix E.—Execution.
Appendix F.—Supplemental Proceedings.
Appendix G.—Arbitration.
Appendix H.—Appeal, Reference and Review.
Appendix I.—Miscellaneous.

THE SECOND SCHEDULE.—Enactments Repealed.

---

## REGULATION VIII OF 1100.

### A Regulation to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature

*Passed by Her Highness the Maha Rani Regent of Travancore under date the 29th Karkatakom 1100, corresponding with the 13th August 1925, under Section 14 of Regulation II of 1097.*

Whereas it is expedient to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature; It is hereby enacted as follows :—

---

The Courts were provided with a Code of Civil Procedure for the first time in the year 1037 M. E., when Regulation II of 1037 was passed on the 15th August 1861/1st Chingom 1037. The Regulation was taken almost without alteration from the British Indian Act, VIII of 1859—the first British Indian Code of Civil Procedure. In fact, the only changes made consisted in the omission from the Regulation of a few Sections of that Act. That Regulation was in force till the year 1065 when Regulation II of 1065 was passed. It was based mainly on the British Indian Act XIV of 1882, with a few alterations made in accordance with the amending Act VIII of 1888 or to meet local requirements. In British India, the Act of 1882 was repealed by Act V of 1908 which is now in force. On the lines of this Act, the present Regulation, VIII of 1100, has been enacted repealing Regulation II of 1065.

**Regn. VIII of 1100 :** I. *Objects and Reasons.*—(1) " The existing Code of Civil Procedure was passed in the year 1065, and more than 30 years having passed, requires revision and re-enactment, to bring it into line with several judicial decisions, since passed, and the law in British India. Several modifications are now made as a result of the experience of the working of the Code for such a long period of 30 years; but speaking broadly, the general principles underlying the existing Code, which has worked satisfactorily, are kept intact.

**2.** The changes that are now proposed are referred to in some detail in the accompanying Notes on Clauses. One feature of the Bill requires prominent mention. In lieu of the hundreds of Sections making up the present Civil Procedure Code, it is proposed to enact 125 Sections in reference to such matters of policy and administration as, in case of change, should require the attention and consideration by the Legislature, while the carrying out of the purpose and object of these Sections is regulated by Rules, that are, in their essence, mere details of machinery, and are, therefore, fit to be changed and adapted to suit new or changed circumstances by means other than resort to the Legislature. This is the method adopted in British India, and has been long in vogue in Great Britain. It is obviously of great advantage in that it provides a means to easily alter mere machinery. There is the disadvantage, no doubt, that the method has to be familiarised and litigants and lawyers have to become familiar with Orders and Rules, as well as Sections, in place of Sections only. This is, however, only a temporary disadvantage, and the similar disadvantage in British India has disappeared long ago.

**3.** The machinery that has been so set up to alter, or add to or abolish the Rules that are gathered in the First Schedule will, it will be noticed, be quite an expert body. Three Judges, including the Chief Justice, and two Vakils of the High Court can be expected to have that close and intimate knowledge of the subject dealt with by Rules, which the lay members of the Legislative Council would find it difficult to acquire and apply. The Government retain,

however, the right to sanction such alterations or additions with a view to be guided by the opinion of the public if and when expressed.

**4.** There is room for difference of opinion, as to what matter may be relegated to the Schedules. The policy of the British Indian Legislature has now been adopted, and alterations may, of course, be made in the course of the progress of the Bill.

**5.** In view of the reservations in the Legislative Council Regulation, certain matters relating to procedure in Civil Courts have to be provided for by means of a law passed by His Highness the Maha Raja direct. The enactment of such a law simultaneously with the passing of the Regulation, and arranged so as to fit in with the Regulation will be an adequate remedy.* * *"

*S. O & R.*

The above Statement was followed by Notes on the various Clauses in the Bill. These are noticed in the Notes under the Sections, Orders and Rules concerned.

(2) In moving that the Bill be read in Council, the Official Member in charge spoke as follows :—

"I may now explain the general principles of the Bill. Before going into the details of the Bill, I may first observe that the existing Civil Procedure Code has been thoroughly recast and the Bill has given it a totally different form. It is therefore natural to question whether we should have adopted such a procedure instead of making the necessary amendments in the existing Regulation itself, keeping its present form. The question probably will be naturally asked by the older members of the legal profession and by the members of the judicial service whose term is almost expiring, whether they should be driven to the necessity of mastering this complicated Civil Procedure Code in the present form instead of being satisfied with the original form with the necessary amendments. My plea for having this particular form is that, in the first place, as all the lawyer members will bear me out, it is a very complicated piece of legislation, and every word in most of its important Sections has received judicial interpretation in Travancore, in British India and in England ; so that it is highly necessary that, when a lawyer has to look for a reference on a particular matter, it is desirable that, as far as possible, the Section or the Order or the Rule in the one should agree as nearly as possible with the corresponding provision in the Indian Act. The British Indian Code adopted the old form of legislation, namely, one similar to what we have got in Regulation II of 1065. But they subsequently changed it into Order and Rule. It is not merely for the purpose of copying the British Indian enactment that the same procedure is adopted here. The importance of it is that, where there is no express ruling in the Travancore High Court on any particular matter, we naturally have to refer to the British Indian rulings on that matter or the English rulings also. Further, even though there may be Travancore rulings, those rulings may have to be reconsidered in the light thrown upon the subject by the British Indian rulings or the English rulings. Naturally therefore, every lawyer, when he has to deal with the Civil Procedure Code in Court, has to refer to the corresponding provision of the British Indian Act, as also the English law on the subject. That being the case, the present arrangement will facilitate reference.

" Secondly, in regard to the most important portion of it, as I said at the outset, it is a complicated piece of legislation, and it is generally only a particular portion of this Regulation that the Legislature will have any interest in ; that is to say, the substantive portion and the most necessary portion which determines the policy. As for the ordinary Rules which regulate the daily routine and the conduct of the Courts and of the practitioners, they may be left to be decided or modified, as the case may be, by two Judges of the High Court assisted by another judge and legal practitioners. That being the case, it was thought necessary

that what ought to go before the Legislature should form one portion of the Bill, and what ought to go before the Rule Committee, as will be explained later, should form a separate head, namely, under Order and Rule. This is in conformity with the trend of modern legislation. General principles are regulated by Statute, while the details are allowed to be governed by Rules. In the Companies Act, while the general provisions are included in the body of the Regulation, the details relating to Articles of Association are given in the Schedule; so also, Orders and Rules will be law governing Courts, unless they are modified in any instance by the Rule Committee. This is another advantage.

"Again, so far as the present form is concerned, I may assure my friends that it was after a good deal of discussion with the late Chief Justice, Mr. Raman Menon, that I adopted this particular form. As I said, the only point against me in this matter is that some practitioners may find it difficult to become acquainted with the thing, and, may, therefore, be put to some inconvenience. My plea is that the busy practitioners who have got large experience must necessarily by this time have been in a position and have had many occasions to refer to British Indian Orders and Rules. Therefore, so far as they are concerned, the arrangement will not in the least entail any serious inconvenience. Further, with the legal training that the senior practitioners have had and the analytical head that they are bound to have in arguing cases before the Court, the quick grasp they will have of all matters must stand them in good stead. A lawyer has to be acquainted with every branch of knowledge in the world, *e. g.*, industrial, medical, sanitary, and, I may even say, theological, and a lot of other subjects, and he easily masters them for the purpose of any case. There could not then be any difficulty for him to master the various Sections of the Civil Procedure Code. So far as the practitioners that have just begun or not yet begun practice are concerned, I do not think that it will be very difficult for them either, because they have to study the procedure necessarily and, therefore, they cannot be put to any difficulty. In the result, the advantage of the present form far outweighs some inconvenience to which some of the practitioners or judicial officers may be put, and I think that the Council will approve the form in which the Bill is shaped. If necessary, it may undergo some change as may be found necessary from the discussion of the Bill by the Select Committee or at a later stage. No radical changes have been attempted. It is only the redrafting of the various Sections with the necessary modifications that has been done.

"Then, passing on to the various Sections of the Code, I shall refer to a few of the most important amendments that have been made. The first amendment is with reference to *res judicata* and this is done to clear all doubts as to what a former suit means. A former suit need not necessarily be one that was filed, but one that was decided formerly, *i. e.*, earlier in point of time, and it is such a suit that will be *res judicata*. Another important matter in which an amendment has been made is this. The High Court at present has absolutely no power to transfer any appeal from the file of the subordinate Courts to its own file. This has naturally led to some inconvenience and difficulty. We know as a matter of fact that two or more suits are filed in the same Court in which the question involved is virtually the same. The Munsiff before whom the suits are filed decides all these suits together, and generally, I may say, by a single judgment. But, when the matter has to be appealed against, some have to go to the High Court and some to the District Court, with the result that the High Court defer the hearing of the appeal until the appeals preferred to the District Court are disposed of, and if it happens to be a concurrent judgment, it happens to operate as *res judicata* and the parties do not derive benefit from it when they go to the High Court. What is proposed by the Section is that in cases of that kind it is open to the High

Court to transfer such appeals from the subordinate Courts to its own file. That, I believe, is decidedly a right step, and the parties will not only be not put to any unnecessary inconvenience, but they will even be in a position to save something.

"The next matter that I have to refer to is the question of interest. This, to my mind, is an important matter which deserves the attention of the House. Before going into the amendment that has been made in the Bill, I may explain what the law on the subject at present is. Our law is based on two Regulations of 1010, which are nearly a century old. The first Regulation enacts so far as money transactions are concerned that a person is not entitled to claim in a suit more than 12 per cent. interest, and in the case of paddy more than 20 per cent., per annum. The second Regulation enacts that a Court may award before decree interest equal to one-half of the amount of the principal and, after decree, interest equal to one-half of the principal in the case of money, while in the case of paddy the amount of interest in such cases may be equal to the principal. These are the main provisions of the existing law. With reference to the second portion of it there was some difference of opinion in the High Court, as to whether the interest amounting to one-half of the principal should be restricted to the date of suit or date of decree. But it has been ruled recently that a person can be entitled to only one-half of the principal amount up to the date of decree. In other words, if a person takes a hypothecation bond at 12 per cent. interest and waits for 4 years without filing a suit, and then if he files the suit, the interest amounting to one-half of the principal will be awarded to him; and, if, owing to the contention of the defendant, it takes about five or six years before the suit is finally decreed—the result, under the existing law, will be that the creditor who was honest enough to give some indulgence to the debtor and therefore took four years' time to go to Court would be prevented from securing the benefit of the advance in the shape of interest owing to no fault of his own, but owing to the delay due to the Court or owing to various other circumstances over which nobody has any control. Then again, in regard to the other portion, the Court usually allows six per cent. interest. The result is that, if anybody has to borrow from any banker or from his money-lender, he will have to pay 12 per cent. The Court allows only 6 per cent. interest. The interest cannot be awarded to the extent of more than one-half of the principal and therefore it is found that it is to the interest of the debtor to see that, as far as possible, steps are taken to prevent the judgment-creditor from executing the decree and throw all sorts of obstacles in his way, so that he may not derive the fruit of the decree itself. That is not my individual opinion. It has been represented at the Sri Mulam Popular Assembly on various occasions by various classes of members, merchants, ordinary ryots and lawyers. I may say that the attention of the Government was pointedly drawn to it at the last session of the Assembly, at the 17th session, by a trader at the 16th session, by another at the 13th session, by others at the 10th and 11th sessions and so on. * *

"That then is the existing state of the law, *viz.*, that a person cannot, under any circumstances, get, in the case of money, more than half the principal up to the date of the decree and a like sum after the decree by way of interest. In the case of paddy, the amount of interest in either case may be equal to the principal at any rate. He cannot claim interest at a rate more than 12 or 20 per cent. in the case of money or paddy. That is the existing law. While that was so, at the 10th session of the Assembly, a trader or rather a member representing the trading classes brought to the notice of Government that the existing Regulation of 1010 was not working satisfactorily in the sense that it was considerably out of date, that it threw considerable restriction on freedom of contract, that it also interfered with natural rights, and that therefore

since the merchants, with their honesty and integrity which are absolutely essential, could not afford to lend any amount at a lower rate, they had recourse to various devices in order to get the same amount which they had to pay to others as interest. These were the difficulties pointed out by him. Government referred the matter to the High Court for their opinion. The High Court then consisted only of four Judges. Mr. Ramachandra Rao, one of the Judges, said:-"There is no doubt that there is considerable inconvenience so far as merchants and traders are concerned." He was therefore of opinion that, if both the contracting parties were merchants and traders or if one of them was, then it was desirable that they should have freedom of contract, the Courts, of course, having the discretion to interfere in cases where it is considered harsh and unconscionable. In the case of a banker, he was prepared to allow compound interest and, therefore, was in favour of modification of the law in that direction. With reference to the third question, *viz.*, as to whether interest on money should be enhanced, he said that, logically speaking, he could not find any distinction between interest at the rate of 20 per cent. for paddy and 12 per cent. for money. Logically speaking both ought to be on the same level. Therefore, interest up to 20 per cent. might be awarded in the case of money also. But he was not for the logical conclusion in such a matter being given effect to and therefore he would leave the matter as it was. Thus, in the result, he was of opinion that the Regulations of 1010 required modification and that the necessary modification might be made. The other Judge that expressed his opinion in the matter was Mr. Muthunayagom Pillai. He said that he was not for absolute freedom of contract. He could not see any reason whatsoever why there should be any difference between paddy and money, so far as the amount of interest was concerned. In the case of paddy, interest equal to the principal was awarded by Courts under the existing Regulation of 1010; and he could not see any reason why, if in the case of paddy the lender was entitled to have his interest equal to the principal amount, it should not be so in the case of money also. Thus we find that Mr. Muthunayagom Pillai agreed that the interest should be equal to the principal. With reference to the other matter, he said that interest after the decree should not be in any way restricted and that it should also be equal to the whole of the principal. He was not for absolute freedom of contract being restored and the Regulations of 1010 repealed *in toto*. He was only for some modification in those Regulations. The next Judge that expressed his opinion was Mr. Krishnan Nair, the then Chief Justice. What he said was that there should be freedom of contract and that it was absolutely undesirable that any restraint should be put upon the people in that matter. What he said was this:—

"People do not require perpetual spoon-feeding. They may be allowed greater freedom and be treated as capable of taking care of themselves. The policy of keeping them in a state of pupilage for ever is not calculated to develop in the people of Travancore the spirit of individuality and self-reliance. They may therefore be allowed freedom of contract, Courts of course being given power to give the requisite relief when they think that the terms of the contract are unconscionable."

"Mr. Justice Viraraghava Aiyangar, the present Chief Justice, also said that there should be freedom of contract between the parties, provided it was not unconscionable, and he further stated that, so far as the amount of interest was concerned, it might be equal to the interest that was claimable in the case of paddy. So that, taking all those opinions together, the result is, as everybody can see, that Regulation I of 1010 requires modification, and that there should not be any difference whatsoever so far as the amount of interest is concerned between paddy and money. Then again, in the

case of merchants, an indulgence may be shown, particularly so far as compound interest or a higher rate of interest is concerned. Government accepted the view of the Chief Justice and Mr. Viraraghava Aiyangar who said that freedom of contract might be allowed to parties, so that they might agree between themselves as to any rate of interest, Courts being empowered to interefere only when the rate of interest was unfair and unconscionable. With the above object in view, a Bill was introduced in the Legislative Council, repealing Regulation I of 1010 and allowing freedom of contract; but it was objected to by the non-official members on the ground that such a revoluntionary change as that, *viz*., the complete repeal of Regulation I of 1010 was uncalled for and that it was not time enough for the people to have recourse to freedom of contract. As many of the Non-official Members were against the measure, the Bill was withdrawn out of deference to their wishes.

"This was, I believe, in 1911. After that, when the existing Civil Procedure Code was taken up for revision, it was thought necessary to give consideration to the various representations on the subject, and the provisions contained in the Bill are the result.

"Now, I may explain what the provisions in the Bill are. In the first place, there is absolutely no objection whatsoever to the borrower paying any rate of interest to the lender under the existing law. If it is actually paid or if all the interest is added to the principal amount and a fresh contract entered into, Courts will not interfere with such liability. Courts will interfere only in cases where a person claims more than 12 per cent. interest in the case of money. Courts will not grant more than 12 per cent. interest in the case of money and more than 20 per cent. in the case of paddy. The present attempt is to remove the difference between paddy and money as regards interest and thereby increase the rate of interest, especially in view of the fact that the rate of interest in the market has recently gone up considerably. It is within the knowledge of all that the 3 per cent. and 3½ per cent. interest on Government securities has gone up considerably higher now than before; and therefore they have affected very seriously the transactions between the ordinary banker and the merchants. Unless therefore there is some provision enhancing the rate of interest whereby, if parties are willing to pay interest up to 18 per cent. Courts should not interfere, considerable hardship will be caused to the parties concerned. What the present Bill says is that Courts may grant interest up to 18 per cent. Even there, it is discretionary for the Court to decree less. But the Court will not be justified in refusing it arbitrarily up to 18 per cent. That is what the present Bill proposes to provide. If in the case of paddy one can pay interest up to 20 per cent. why should he not pay it up to 18 per cent. in the case of money. This rate has been reduced to 18 per cent. in the case of Chitty transactions and in the case of Jenmis and Kudiyans. It may be said that the persons who borrow are agriculturists. I know that an opinion is entertained by some that, Travancore being an agricultural country and the borrowers agriculturists, the rate of interest in the country should not be increased. To this I shall only say that if we go further north it is the agriculturists who borrow. They borrow paddy at 20 per cent. interest, *i. e*. at a higher rate than is allowed under the Bill. Under the old Regulation, that is legitimate. The present Bill proposes to reduce it by 2 per cent. and not to enhance it. According to the Bill, money is not to be regarded as in any way different from paddy. This will enable Courts to award interest up to 18 per cent. and I think this cannot be considered going too far. Then going to the next portion of it, *viz*., how much the interest should amount to, I have read out to you the opinion of the Judges of the High Court that if the amount may be equal to the principal in the case of paddy there is no reason why it should not be so in the case of money also, and therefore it is said in the Bill that the amount of interest up to the date of the institution of suit may

equal to the principal. It is only the interest that the judgment-debtor has got to pay every month or at any other interval as agreed to by him. If he did not pay or if he promised to pay at a future date and if the creditor showed him some indulgence, it is not fair that the latter should be asked to forego the interest to which he was legitimately entitled.

"With reference to the other portion, *viz.*, interest from date of suit to date of decree, I think it will be agreed by all that for the delay in the administration of justice, the party ought not to suffer and he should not be called upon to forego the interest for that period. So also after the date of decree, obstacles are sometimes thrown by the judgment-debtors. Once the suit is filed, there is, strictly speaking, a legitimate and a formal demand for payment of money and if a debtor will not pay it, irrespective of the pendency of the suit or delay in the execution of the decree, whatever be the amount of interest that may be decreed by the Court, the judgment-creditor should be entitled to realise it. With reference to the third portion, *i. e.*, compound interest, we all know—those who have got any dealing with banks or bankers know—that at the end of every year, on all our deposits, they calculate interest, that this interest is added to the principal, and that the amount is entered in our pass-book as principal, and we claim and do receive interest accordingly. If in the case of a banker he has to pay compound interest to his depositors and customers, I do not see why he should not receive compound interest from his debtors. In such a case, it is distinctly provided that there should be a written agreement to the effect that the debtor agrees to pay compound interest or that there must be usage to that effect. Otherwise, compound interest cannot be claimed. These are the three main provisions that have been made in the new Bill as regards interest.

"The next matter I may draw the attention of this House to is the provision contained in Sections 53 and 54. Under the existing Regulation, there is no particular provision to exempt any portion of agricultural produce from attachment. It may be that, in many cases, whatever the agriculturist has got by way of agricultural produce is attached. It will not then be possible for him to live till the next harvest and he will not be able to proceed with his cultivation for the next crop. Hence Section 53 provides that it is open to the Government with reference to all agriculturists or any particular class of agriculturists to declare that any portion of the agricultural produce or any particular class of agricultural produce shall be exempt from attachment in execution of a decree, so that the agriculturists may enjoy the privilege of continuing the cultivation and may be able to live until the next harvest comes.

"The next provision is about public nuisance. We know that, in the case of a public nuisance, nobody is entitled to file a suit until he is aggrieved. He must prove that he is damnified. If there is no such proof he is not entitled to sue. We know, as a matter of fact, that although a person may not be prejudiced by a nuisance, the public as a class may be prejudiced. In such cases, it is deemed desirable that somebody should come forward and see that the nuisance is abated. It is proposed to empower the Dewan or some one with the permission of the Dewan to institute a suit to remove such nuisances.

"Then there are particular Sections which provide for the making of Rules. I said that the Order portion of the Bill is only a matter detailing the procedure that has to be followed by or in Courts. That procedure may be modified by the High Court. The High Court now does it generally by means of Circulars. It is not necessary that the Council should be inflicted with the details of procedure, whenever it has to be modified. It is therefore thought that, being a matter which is of peculiar interest to and which is peculiarly within the knowledge of lawyers and Judges, it is

desirable, instead of trying to bring in small amending Bills for insignificant matters, to leave such amendments to the Rule Committee. This committee is not to consist of Judges alone. It is to consist of the Chief Justice and a Judge of the High Court, a District Judge and two High Court Vakils. These Judges and Vakils who can give expert opinion on the subject should go into the question and see whether any particular Rule in the Order requires any slight modification. What is now generally done by means of Circulars would be done by them without being driven to the necessity of going to the Council for amending the Code. In the latter case there will be a lot of delay. It is also better done by a body of experts. Hence the provision relating to the Rule Committee.

"Then we go to Orders and Rules. There is a particular Order for the legal practitioner to follow in regard to pleadings, *i. e.*, as to what all should be said in a pleading. Although as a matter of fact this is generally observed, the Bill states, in a little more detail, what should be done and what not.

"Then in regard to interrogatories. At present the provision regarding this is vague. Interrogatories are answered indefinitely and are never answered to the point. Every body tries to take shelter under the exception. There are ever so many circumstances under which the party may decline to answer an interrogatory. What the present Order proposes to lay down is that, after the issues are framed, it should be open to a party before letting in evidence to ask the opposite side to say whether he admits any particular fact, and if he does not admit it, the cost of proving it should be borne by the party who does not admit it. As a matter of fact, when the allegations are recorded and issues are framed, great care is taken to record admissions and denials. All the same, what the party says is "I do not know" or "I am not aware". The genuineness is admitted. According to this particular Order, any party may ask the other side to say whether he admits a particula fact or not. This will necessarily reduc the amount of evidence which one has t give.

"The next point is with reference to pre liminary and final decrees. A distinction now made between a preliminary decre and a final decree, and it is made obl gatory upon a person who is not satisfie with a preliminary decree to appeal im mediately. If he does not do so, the ap peal is barred. A preliminary decree ma be made in suits for the dissolution of part nerships, for account, etc. For instance, after the Court decides that the share should be distributed in a particular wa and after that the commissioner makes report and the various items are allotted t each individual, a party goes on appeal an says that the preliminary decree is wrong a good deal of money and time will hav been wasted by the party. Therefore, it i provided that, if a person is not satisfie with a preliminary decree, he may straight way prefer an appeal against it and, if h fails to do so, he shall not be allowed t take objection against the preliminary de cree later on.

"The next important matter is the pro vision about the restitution of conjuga rights. We know that in the Criminal Pro cedure Code there is a provision that, if Court decrees restitution, the man or woma who is not willing to obey the decree ma be sent to prison. Whether it is the hus band or the wife, it may not be that the de cretal portion will be satisfied by the en forcement of the decree in that manner. S that what the Bill provides is that a Cou may say that a wife shall not be arrested she refuses to obey the decree. Again i the case of a husband if he disobeys, h may, in the decree, be asked to award main tenance, because by no means of enforce ment can the Court make the parties liv together, if they do not like to do so. Henc some safeguards are provided and the pro vision as to imprisonment is removed.

"The next provision is about the appointment of receivers. Receivers are now appointed only by the District Courts. The Bill makes a provision according to which even the Munsiffs' Courts can do it. Receivers may be appointed not only under circumstances mentioned in the existing Civil Procedure Code, but in all cases where, in the interests of justice, the Court considers it desirable to do so. Wide power is vested in the Government with a view to the appointment of receivers.

"Another amendment that has been made is in the matter of appeals and objections. We know as a matter of fact that all objections have to be filed within a certain number of days, and if they are not so filed, the opinion of the High Court till recently was that the High Court had no power to excuse the delay. Recently, there seems to have been a change to the effect that the question of the delay can be gone into. Then again, if the appeal is withdrawn, the objection *ipso facto* fails. That is also prevented. Then again, objections are allowed to be preferred *in forma pauperis.* Then with reference to appellate powers there seems to have been considerable difficulty until recently. In some matters where a person claims money in a suit against A or B in the alternative, the Court decides that the plaintiff shall recover from A and the plaintiff is perfectly satisfied with that decision. But when A appeals and all are parties to the appeal, the Appellate Court finds that A is not liable, but that B is liable. But the plaintiff not having appealed against the decree, the Appellate Court has some difficulty in giving a decree against B. After straining the language and fully realising that the party did not prefer the appeal because he was satisfied with the decree, the High Court had to pass a decree against B. The present Bill only legalises or gives recognition to the ruling of the High Court and says that the decree in such cases may be modified by the Appellate Court provided that all parties to the transaction are brought in.

"Lastly, there is another amendment, which is with reference to paupers. In regard to suits to be instituted by paupers, there seems to be some restriction. As it is, paupers cannot sue for loss of caste, libel and slander. According to the present Bill, this restriction has been removed.

"It is impossible for me to detail all the various provisions from beginning to end, because the Bill is a voluminous one. The whole thing will have to be threshed out by the Select Committee. I have, therefore, given only some of the important outstanding features of the Bill, and I believe that the general principle of the Bill will be accepted by the Council."

Discussion followed in which several Non-official Members took part. Objections were raised to some of the principles embodied in the Bill, and to the form and arrangement of its provisions. To these, the Official Member in charge replied as follows:—

"I may sum up the criticisms under four heads: first, as to the form of the Bill; second, as to the delegation of the power of amendment of a portion of the Regulation to the Rule Committee, instead of vesting it in the Council itself; third, embodying the provision as to interest in this Bill instead of enacting a separate law for the same; and fourth, the provision as to the rate, amount and nature of interest. These, I believe, are the main heads of criticism. Of course, there were one or two minor matters which were referred to in the course of the discussion, but all those matters of detail may, I believe, be considered by the Select Committee, if the Bill is to be referred to it at all. I shall therefore confine my remarks to these four main heads.

"First, let me begin with the interest question, in respect of which there seems to be practical agreement on the non-official side. In the first place, I must demur to the suggestion of my friends that it ought not to find a place in the Civil Procedure Code. Every one of us is aware of the Regulations of 1010 M. E. But unless we refer

to the Sections themselves we do not know whether they enact substantive law or procedure law. The Regulations of 1010 do not purport to be substantive law. Regulation I does not say that no man shall receive more than 12 per cent., but what it does say is :

"Munsiffs are hereby prohibited from allowing in their decrees a greater rate of interest in any suit brought before them than twelve rupees per cent. per annum."

"In decrees on suits, the Munsiff shall allow, in the decree, the interest that may be due from the period the suit may have been instituted to the day on which the decree shall be passed".

That portion of the Regulation applies only to the Munsiffs, although practically Zillah Judges exercise that power. Regulation IV relates to Zillah Judges.

"In decrees on civil suits, the interest must be charged on the principal from the *date of the decree* to the day of its execution."

So that what Regulations I and IV of 1010 say is that Munsiffs shall not award a greater rate of interest than 12 per cent. in their decrees ; but they do not say that no man shall receive more than 12 per cent. interest; nor do they say that, if more than 12 per cent. has been included in a settled account, that account shall be reopened. They only enact that a Munsiff or a Zillah Judge shall *not decree more than* what is permitted in the Regulation. And what I have said in Section 31 (1) is :

"In suits for money, or for grain, no Court shall, in respect to the period antecedent to the institution of the suit, allow in its decree a greater rate of interest."

I am, word for word, so to say, following the old Regulation when I say that no Court shall award more than a certain percentage of interest. And I do not know why there should be so much complaint about substantive and adjective law.

My friends on the other side *do* know that I perfectly appreciate any amount of criticism and even severe language. I am n at all distrubed and I do not take su criticisms amiss. What I ask is whether have introduced any new procedure stealtl ly into this Bill or whether I have smu gled anything into this Bill. It is a matt for this Council to decide. * *

"What I say is that, even under tl existing law, there is no prohibition at ɛ for anybody demanding 5 per cent. *vattai* but what we are concerned with is that : Court shall award a man more than 12 18 per cent. interest. I did not want avoid public criticism by introducing tl provision in this Bill instead of having separate enactment. I have always thoug that, when there are twenty-eight elect members of the people, they are quite co petent to criticise any particular Bill. that Bill is not acceptable to the publ certainly it will not be acceptable to tl Council, because the members here are t representatives of the people. I explain the provision in the Statement of Obje and Reasons and devoted a large portion my speech this morning to the questic Does this signify any covert intentio Is it consistent with stealth or smugglin It is rather uncharitable for the membe to say that it was with a stealthy or ulteri motive, *i. e.*, to escape detection and there criticism that I put this clause into tl Bill. * *

"It is a matter relating to the inter the Court was competent to provide in t decree. It is a matter relating to that, ar therefore, that provision should find a pl in the Civil Procedure Code, and nowhe else. It was not because I wanted to ma any difference between substantive a procedure law, but because it was a matt which the Court had to decide that I int duced it here. But when so much objecti was taken on the ground that I stealth tried to incorporate substantive law i procedure law and procedure law into s stantive law, I contend that there is foundation for making such a serious char We are not concerned with the question

to what a person may or may not receive from the debtor without any foundation. But what we are concerned with here is, what is it that a Court can decree? That, in my humble opinion, can find a place in this Code. After all, we are fighting the shadow and not the substance. The provision of this Section in the Civil Procedure Code will save a lot of trouble to the Civil Courts, lawyers and litigants, having to refer to some other Regulation on the question of interest. I have not the slightest objection to any amount of fair criticism and shall be glad to plead guilty, if there was any such intention in my mind. I will ask my friends to consider whether they were justified in this remark and leave the matter there. * *

"In British India there is no Regulation corresponding to the Regulations of 1010, directing Courts to decree in a particular way. There the whole thing is based on freedom of contract, and, unless, therefore, the interest claimed is unconscionable they do not do anything of the kind except as to future rates of interest. Here we have a law directing the Munsiff or the District Judge to decree in a particular way. * *

"In the Indian Legislature there was not only a move but an Act that freedom of contract should be restricted in some way. It was in the year 1918 or 1919—I do not exactly remember the year—that an Act was passed about interest, and Courts are empowered to interfere under certain circumstances.

"I have pointed out in what particular portion of the statute this has to find a place. I shall now deal with the next objection—the objection as to whether the rate should be 12 or 18 per cent. I never said that there should be complete freedom of contract. I was only referring to freedom of contract when I quoted the opinion of some of the Judges of the High Court. With reference to this aspect of the question, there are four points to be considered:—(1) the raising of the interest on money from 12 to 18 per cent; (2) whether there should be any modification in respect of the amount of interest awardable till the date of suit in the case of money; (3) whether there should be any limit to the amount of interest awardable after suit; and (4) whether compound interest under certain circumstances may be awarded. Under the last three heads, I heard no objection. * * I did not hear anything about the interest being equal to the principal before the date of suit. So that, practically, the whole discussion centres on one point, as to what the interest should be—12 or 18 per cent. In order that there may not be any distinction between money and paddy—probably it may be said there need be no logic in legislation—the interest on money has been raised from 12 to 18 per cent. and the interest on paddy reduced from 20 to 18 per cent. That was the line of my argument and I did not advance any other. So far as I could gather, the House seems to be against 18 per cent. in the case of money. I think that whether it should be 18 or 12 per cent. is a matter which could be very carefully threshed out in the Select Committee. I can assure my friends on the other side of the House—and I think those who were with me during the Select Committee discussion on the High Court Regulation Amendment Bill will agree—that if we are able to convince one another of the hardship or inconvenience or the absence of necessity of any particular measure, we generally agree and bring the Bill to a shape which would be acceptable to the public. The mere fact that a Bill has been introduced here does not prevent the Council from discussing it at a later stage. We are at the most preliminary stage now. The Bill has to be threshed out by the Select Committee; the Bill has to come again to the Council and it has to pass it once, twice and thrice. The members need not entertain any doubt that it is going to be passed into law as 18 per cent. Members do know that, under the Legislative Council Regulation, the Bill is not going to become law unless the Council passes it.

"Now I pass on to the next point, *i. e.*, the part relating to the Rule Committee,

about which much was said. I only said that the object in putting in that provision was that the time of the Council need not be taken up in making small amendments that may be required in a Regulation of this kind. * * *

"If the House is not agreed to the provision regarding the Rule Committee, I am not for delegating it to that authority. I never meant that the power of the House should be delegated to some other Committee. But I may explain that the ordinary substantive portion of the Regulation is in the main part and the purely procedure portion of it is in another part. These matters of detail, I thought, might be safely left to the Rule Committee and that they might very well be left to be decided by members of the High Court and the legal profession. But if that is not acceptable to the House, it is open to the Select Committee to delete that part, as has, on many other previous occasions, been done when Bills were referred to Select Committees.

"The only question that now remains is with regard to the form. * * * The question naturally asked is why we should adopt this form. A great deal was said about the form in which the Bill was presented. It was said that very great difficulty would be felt in mastering it. With all deference to my learned friends, may I say that it is not so difficult as they imagine? For a few months there may be some difficulty. But it should not be supposed that it will be stamped as a piece of legislation which will be perpetually confounding to all practitioners.

"Let me say what the Bill contains. One or two Sections deal with important matter; every detail connected with that matter is provided for under a particular Order as Rules. Matters connected with the forms for entertaining a suit, the production of a document, execution, etc., are provided for in the main body and the corresponding details under the head 'Orders'. These could be referred to without much difficulty. But then, my friend asks "why is it tha put it in this form?" * * *
Before I drafted the Bill, I had cussion, as I said, with the late Justice who was acquainted with C and British Indian Codes. I disc with him on two days about the re advantages or disadvantages of this : He said that he was attentively ening to every one of my arguments after that he stated that this parti form must be adopted. If my friends to the English Law they will find tha whole thing there is in the form of O and Rules. If I am accused of slavis itation of British Indian Law, I plead g along with eminent judges and jurists.

"If any practising lawyer has to re Travancore Law Reports to argue a cas first thing he does is to take up the B Indian Code. He finds that most of Orders and Rules of the British Ir Code are referred to there. The late ( Justice, therefore, advised me very seri and strongly that I should adopt this in the matter of the Civil Procedure ( so that we might have the benefit of rulings of eminent and learned judges in England and India. Therefore this f was adopted. There is nothing in i harmful as my friends would suppose. my friends have read the City Municipa Act or the Local Boards Act or any the recent legislative enactments in Bri India, they will find that the substan portion is put in the body of the Act and rest in the form of schedules which ma modified. Whatever may be the age that has to modify it, whether it is the Le lative Council or the Government, so fa these minor matters are concerned, t are relegated to a separate portion of Act instead of being bound up with the portant portion thereof. This appeale me to a great extent. I know that ther only one High Court in Travancore jurisdiction of which is not so large as t of British Indian Courts. The substant and important portion is all under one h

and the processual and unimportant portion under another head. We have only to remember about thirty or forty Orders which any lawyer can master. * What I, therefore, appeal to this House is not to oppose the Bill on this solitary ground. In British India also there are numerous litigants and lawyers; and, after this new Code in its present form was introduced, they were able to become familiar with it in a few months. The Order system is more methodical, more satisfactory and easier for reference, and we shall be in a position to pick it up without difficulty. By so doing we get, in the words of the late Chief Justice, the advice of the best legal talent in India and England for nothing. I ask the House, if it would, for the mere sake of technical form, reject this Bill which is in the best legal form and ask me to do the laborious task of rearranging, amending and presenting it in another form; I appeal to the House to say whether, to save the trouble of mastering it in a month or two, it would have the whole Bill rejected and wait till a new Bill is introduced in the Council. Personally I shall be glad as the drafting of such a Bill would take a long time and I shall be spared the trouble and worry of steering it through the Select Committee and through this Council.

"We have spent a lot of money in preparing the present Bill. I repeat that I discussed the matter with the late Chief Justice whom I consider to be a very learned jurist, before I made up my mind to adopt this particular form, and I think that we should take note of the respect that is due to him before we reject this Bill. In our previous enactment on the subject we adopted the British Indian Act in the form in which it was enacted then. I do not see why we should not do the same thing now. If the substance is acceptable the form is immaterial. It is open to the Select Committee consisting of a large number of learned members of this House to modify the Bill in any way they choose except of course the form. I have said what I have to say in the matter and I am quite confident that the members will exercise their sound judgment before voting on the motion now before them."

After some further discussion, the Bill was read in Council and referred to a Select Committee.— *L. C. P. dated 21-11-1922.*

II. Leave to introduce the Bill was applied for and granted at the meeting of the Council held on 13-3-1919 (*T. G. G., dated 15-4-1919*). The Bill was published in the Gazette dated 13-6-1922. It was read in the Council and referred to a Select Committee on 21-11-1922 (*L. C. P., Vol. II, Pp. 80—138*). The Select Committee's Report was published on 13-1-1925. It was presented to, and considered by, the Council on 13-2-1925 (*L. C. P., Vol. VI, Pp. 1188—1211*). At the same meeting, the Bill was finally read and passed.

**Regn. X of 1100.** I. *Objects and Reasons.*—The Code of Civil Procedure Bill passed by the Legislative Council in its last session is to come into operation on the 1st day of Chingom 1101. It is a long and important measure affecting even the details of the procedure in Civil Courts. Representation has been received by Government for the postponement of the commencement of the measure. It is felt that it will be advantageous for all parties concerned, the Courts, litigants and practitioners, that they are allowed ample time to acquaint themselves with the measure after its publication as a Regulation. Hence the present Bill is drafted to postpone the commencement of the Code of Civil Procedure to the 1st Medom 1101.— *S. O & R.*

II. The Bill was published in the Gazette dated 11-8-1925. It was read in Council on 13-8-1925 (*L. C. P., Vol. VII, Pp. 855-858*). At the same meeting, it was taken up for consideration as the Bill being a short one it was considered unnecessary to refer it to a Select Committee. The Bill was considered, and an amendment for substituting 'Makarom' for 'Medom' was moved and passed. The Bill was finally

read and passed on 14-8-1925 (*L. C. P., Vol. VII, P. 954*). The Regulation was published in the Gazette dated 18-8-1925.

**Regn. III of 1101:** I. *Objects and Reasons.*—"When the Code of Civil Procedure Regulation, VIII of 1100, was passed by the Council, matters which under the Legislative Council Regulation were beyond the purview of that body were excluded from that enactment. Amongst these matters were suits by or against the Sripadam Palace, the execution by the Travancore Courts of foreign decrees, suits in Travancore Courts by or against the Imperial Government or Indian Princes in alliance with the Imperial Government and the execution of decrees in such Courts. To lay down the procedure in such matters, the Amendment Regulation was passed.—

*A. R., 1101 M. E. P. 66.*

II. The Amending Regulation was passed by Her Highness the Maha Rani Regent, under Section 20 of Regulation II of 1097, and was published in the Gazette dated 2-3-1926.

III. The Sections of Regulation III of 1101 are embodied in this Code.—*Vide* Section 38-A, Explanation to Section 64, 66-A, 66-B, 67-A, 67-B, 99-A, 99-B, 99-C, and Schedule.

---

**Preamble:** I.

There is nothing in the Civil Procedure Code which will justify the inference that the term "Court" has been used by the Legislature as synonymous with "Civil Court". The Code (Regulation II of 1065) uses the expression "Civil Court" in several Sections. Section 580 [new Section 100] exempts a Magistrate from arrest under civil processes while going to, presiding in or returning from *his Court*. The term "Courts" in Section 269 [=Or. XXI, r. 50] which, in its ordinary meaning will apply both to Civil and Criminal Courts has been held to include Criminal Courts as well. The reason is stated to be to avoid unseemly conflict between the Courts. The Criminal Procedure Code contains p sions for the determination of claims t tached property. The effect of an c passed on claims under the Criminal cedure Code is the same as that of an c passed under the Civil Procedure C Both are final unless set aside by the de of a Civil Court.

"It is an undoubted rule of constru that when the language of the ena Sections of a statute is clear, the term the Preamble cannot be called in to strict their operation or cut them do (11 All., 262).

"I believe it to be an axiom that body of a Bill is not to be construed b Preamble, or, to put it more guardedl the Preamble provides for a wider misc than the Bill in its Sections enacts, you not to give those Sections a wider scope t their language properly interpreted j fies" (14 All., 154). "But the Preamb undoubtedly a part of the Act and may used to explain it, and is, as Lord Coke s a key to open the meaning of the make the Act, and the mischiefs it was inter to remedy, but, on the other hand, altho it may explain, it cannot control the acting part which may and often does beyond the Preamble" (1 Hare's Repo 196).

It is therefore clear that if the w "Court" includes a Criminal Court in ordinary meaning of the word, the I amble cannot be resorted to for the pur of limiting its meaning by excluding minal Courts, unless there are strong wo in the Preamble indicating the intentio the Legislature to control the effect of enacting portion. The Preamble to Civil Procedure Code is very short as such preambles are, and there is no gen rule that the Preamble can restrict comprehensive words of the enacting cla "But the Preamble cannot either rest or extend the enacting part when the la uage and the object and the scope of Act are not open to doubt. It is not usual to find that the enacting part is

exactly co-extensive with the Preamble. In many Acts of Parliament, although a particular mischief is recited, the legislative provisions extend beyond it. The Preamble is often no more than a recital of some of the inconveniences and does not include any others for which a remedy is given by the statute. The evil recited is '*but the motive* for legislation'; the remedy may both consistently and wisely be extended beyond the cure of that evil; *and if, on a review of the whole Act a wider intention than that expressed in the Preamble appears to be the real one, effect is to be given to it notwithstanding the less extensive import of the Preamble*" (Maxwell).—

**27 T. L. R.**, *123* (**2 T. L. J.**, *232*).

II.

**1.** The Code of Civil Procedure deals only with adjective law.—

**26 T. L. R.**, *83* (**1 T. L. J.**, *284*).

**2.** 'It is not uncommonly thought that it is sufficient to defeat an application or to reverse an order that no particular Section of the Code can be cited as an authority for it.'

'The Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by law. As a matter of general principle, prohibitions cannot be persumed.' (5 All. 172).

The Civil Procedure Code certainly binds the Court so far as it goes. If the Code prescribes a particular course, in a particular case, that course must be followed. If it contains an express prohibition, it must be given effect to. Each case has to be determined with reference to its own circumstances.—

**27 T. L. R.**, *61* (**2 T. L. J.**, *270*).

**3.** The Civil Procedure Code is not exhaustive.—

**26 T. L. R.**, *162*.
**27 T. L. R.**, *61* (**2 T. L. J.**, *270*).
**32 T. L. R.**, *80*.
**38 T. L. R.**, *274* (**12 T. L. J.**, *296*).

**4.** The Code of Civil Procedure is a law *prima facie* laying down procedure, and substantive rights and rights of suit, which may be independently shown to exist, cannot, in the absence of express words, be held to have been abrogated by such a Code (F. B.).—**30 T. L. R.**, *91* (**4 T. L. J.**, *305*).
**35 T. L. R.**, *133* (**9 T. L. J.**, *134*).

**5.** The Code of Civil Procedure purports to be a statute which consolidates and amends the laws relating to the Procedure of the Courts of Civil Judicature (F. B.).—

**42 T. L. R.**, *174* (**15 T. L. J.**, *394*).

**6.** Where there is any precedent of the High Court which contains a definite expression of opinion on a disputed point of law or procedure, it ought to be followed in preference to any pronouncement of a foreign Court which, though entitled to the highest respect, has no binding force on the Travancore High Court, particularly when the two come into conflict with each other.—

**42 T. L. R.**, *29* (**16 T. L. J.**, *10*).

**7.** It would not be wise to depart from a sound rule which has been settled law for several years, merely because a different view has been taken by the Courts in British India.— **16 T. L. J.**, *221*.

**8.** Under the maxim '*Nova Constitutio, Futurin formam imponere debet, non-preteritis*' (a new state of the law ought to affect the future, not the past), normally, Statutes are prospective and not retrospective in their operation. They are not to be so interpreted as to have a retrospective operation, unless they contain clear and express words to that effect, or the object, subject-matter, or context shows that such was their object. This rule is based on the presumption that the Legislature would not intend what is unjust. The rule prevails chiefly where the enactment would prejudicially affect vested rights, or the legal character of past transactions or impair contracts. It is, however, inapplicable to

laws relating to procedure and form. Such statutes are, as a rule, retrospective in their operation, unless the contrary is expressed or there be some good reason against it. No one can be said to have any vested right in any particular form of procedure. It has however to be remembered that even procedural laws cannot be given restrospective effect if they tend to interfere with vested rights, unless they contain express provisions warranting the same. In procedural laws, retrospective effect should not be given in case the application of the new procedure will prejudice rights established under the old.— **17 T. L. J.,** *229.*

**9.** While on the one hand it would be a dangerous doctrine to lay down a hard and fast rule to the effect that a criminal trial or enquiry should of necessity be stayed, simply because a civil suit has been instituted between the parties in which some of the matters in issue in the criminal case would have to be determined, it cannot be denied that, in some cases, it would be obviously undesirable to allow the same dispute to be fought out in two Courts, *viz.*, the Civil and the Criminal.

It is unsafe to lay down a general rule that no stay of criminal proceedings can be ordered when the civil suit can be instituted later.

The objection that once the criminal proceedings against accused are stayed he will be in no hurry to bring the civil litigation to a close cannot hold good where the complainant himself has started the civil proceedings.

It is entirely within the discretion of the Magistrate to stay proceedings till the disposal of the civil suit and the High Court will not interfere unless the discretion has been exercised arbitrarily so as to defeat or hamper justice.— **17 T. L. J.,** *911.*

**10.** Statutes are *prima faci e* prospective and not retrospective in their operations, unless a clear intention to the contrary is made out from the wording thereof. Even in cases where a retrospective operation is clearly gatherable from the wording, statute should not be construed so as have a greater restrospective operati than its language renders necessary. T) only exception to this rule is with respe to procedural statutes. Even as regar them no retrospective operation could given effect to, if they interfere with righ already vested in the parties.—

**18 T. L. J.,** *72*

III.

**1.** It is an elementary canon of inte: pretation of statutes that "expressions usc by the Legislature must be taken to be nc referring to the same matter but as bein mutually exclusive. Where analogot words are used each may be presumed t be susceptible of a separate and distinc meaning, for the Legislature is not sur posed to use words without meaning." "I has been justly remarked that where pre cision is required, no safer rule can be fol lowed than always to call the same thin by the same name. It is, at all events reasonable to presume that the same mean ing is intended for the same expression i every part of an Act" (Maxwell).—

**43 T. L. R.,** *99* **(17 T. L. J.,** *644*).

**2.** If is an elementary canon of interpretation of statutes that the language usec therein has to be construed as it stand and its ordinary sense could not be strained by the importation of new words with a view to limit or enlarge the scope of the provisions contained therein.—

**43 T. L. R.,** *310* **(17 T. L. J.,** *523*).

**3.** Where the marginal notes are not inconsistent with the plain meaning of the Section, they can be referred to.—

**18 T. L. J.,** *384.*

**4.** In interpreting statutes, it has to be remembered that there are certain other rules which are no less fundamental than the rule of literal interpretation. "It is in the last degree improbable that the Legislature would overthrow fundamental principles, infringe rights or depart from the general system of law, without express-

ing its intention with irresistible clearness; and to give any such effect to general words, simply because they have that meaning in their widest or usual or natural sense, would be to give them a meaning in which they were not really used. General words and phrases, therefore, however wide and comprehensive in their literal sense, must be construed as strictly limited to the actual objects of the Act, and as not altering the law beyond." (Maxwell). Under this rule, the learned author has cited numerous instances in which words and phrases of general import, such as "any Court", "every person," "all persons," "any act or thing whatever," "any agent", "every matter in dispute," &c., were given only restricted meaning when that was found to be the intention of the Legislature.

"The literal construction then, has, in general, but a *prima facie* preference. To arrive at the real meaning, it is always necessary to get at an exact conception of the aim, scope and object of the whole Act; to consider, according to Lord Coke, (1) What was the law before the Act was passed? (2) What was the mischief or defect for which the law had not provided? (3) What remedy Parliament has appointed? and (4) The reason of the remedy. According to another authority, the true meaning is to be found, not merely from the words of the Act, but from the causes of the necessity of its being made which are to be ascertained not only from a comparison of its several parts, but also from extraneous circumstances. The true meaning of any passage, it is said, is to be found not merely in the words of the passage, but in comparing it with every other part of the law, ascertaining also what were the circumstances with reference to which the words were used, and what was the object appearing from those circumstances, which the Legislature had in view." (Maxwell).—
**19 T. L. J.**, *898.*

**5.** See also—

Sec. 76.—**43 T. L. R.**, *212*
(**17 L. J.**, *356*).
Or. XXI, r. 16.—**17 T. L. J.**, *276.*

IV.

Without consent of the parties and in the absence of urgent necessity, no civil trial should proceed on Sundays or Gazetted holidays. This is a rule which is essentially wholesome and is in perfect accord with the recognised practice of the Civil Courts of this State.—**11 T. L. J.**, *429.*

---

**N. B.—1.** In the Notes are given, for facility of reference, the corresponding Sections of Regulation II of 1065, the Sections, Orders and Rules of the Indian Code (Act V of 1908) and the English Rules taken from the 1925 Edition of "the Yearly Practice of the Supreme Court." These are enclosed within square brackets. The figures given first (in ordinary type) refer to the Sections of the old Regulation, those given next (in italics) denote the Sections, Orders and Rules of the Indian Code, and the last set of figures, the English Orders and Rules. Where there is no corresponding provision in the old Regulation or in the Indian Code, the mark [,,] is used to denote the same.

**2.** Wherever the old Regulation or the Indian Code differs from the existing Regulation, the Sections and Rules of the former are given in full or the differences duly noted. In other cases, the provisions in the three enactments may be taken to be the same.

**3.** In view to an understanding of the provisions of the Regulation, explanations, wherever forthcoming, are also given in the Notes. For this purpose, the following have been utilised :—

## Preliminary.

Short title, commencement and extent.

1. (1) This Regulation may be cited as the Code of C Procedure, 1100.

(2) It shall come into force on the first day of [Makarc 1101.

(3) It extends to the whole of Travancore.

Definitions.

2. In this Regulation, unless there is anything repugnan the subject or context,—

---

(a) The Statement of Objects and Reasons and the Notes on Clauses appe to the Bill which was passed as Regulation VIII of 1100: the Select mittee's Report thereon and the discussions in the Legislative Co connected therewith.

(b) The Statements of Objects and Reasons appended to the Bills which be Regulations II of 1065 and II of 1070: the Select Committees' Re thereon and the Legislative Council discussions.

(c) The Statement of Objects and Reasons appended to the India Bill N of 1901 (Bill to amend the Code of Civil Procedure) published in Pa of the Gazette of India, dated 21st December 1901: the Select Commit Report thereon published in Part V of the Gazette of India dated March 1908.

(d) The Statement of Objects and Reasons with Notes on Clauses—being Report of the Special Committee appointed to consider the amendme the Indian Code of Civil Procedure—appended to Bill No. 2 of 1907 published in the Fort St. George Gazette dated 1st October 1907: Report of the Select Committee thereon published in Part V of the Ga of India dated 15th February 1908.

---

**Sec. 1:**

The Regulation, as enacted, was to come into force on the first day of Chingom 1101. By the amending Regulation X of 1100, 'Makarom' was substituted for 'Chingom.' See Objects and Reasons, *Supra.*

**Sec. 2** [=S. 2=*S. 2*]

1. All the expressions defined in the British Indian Code are also defined in the present Regulation, with the exceptio "Movable property" which is define that Code as including growing c The original Bill contained this defini but the Select Committee omitted it, the same is defined in the General Cla Regulation".— *S. C*

In the General Clauses Regulation, 1 1072, "Movable property" is define meaning "property of every descrip

139



(1) "Code" includes Rules:

(2) "Decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 40 or Section 108, but shall not include—

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

*Explanation.*—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

---

except immovable property"; and "Immovable property" is defined as including "land......but not standing crops".

**2.** The definitions of the following expressions are new:—"Code", "Legal representative", "Prescribed" "Rules" and "Share in a corporation".

**3.** Of the terms defined in Regulation II of 1065, the following have been omitted:—"Written" and "Immovable property." The latter expression was thus defined in the old Regulation:—"'Immovable property' includes decrees relating to immovable property." And, in the Statement of Objects and Reasons, it was observed that the term was so defined "in order to remove a doubt which would otherwise arise as to whether the procedure to be adopted in sales of decrees for immovable property is that prescribed for sales of movables or immovables".— *Para 6.*

---

Hereditary or permanent services to which emoluments were attached were held to be immovable property.—

**42 T. L. R., *477* (16 T. L. J., *405*).**

---

**Sec. 2** (2): I. The definition of the term in Regulation II of 1065 was the same as in the British Indian Code of 1882. It was as follows :—

"'Decree' means the formal expression of an adjudication upon any right claimed, or defence set up, in a Civil Court, when such adjudication, so far as regards the Court expressing it, decides the suit or appeal. An order rejecting a plaint, or directing accounts to be taken, or determining any question mentioned or referred to in Section 238, but not specified in Section 557, is within this definition : an order specified in Section 557 is not within this definition."

[Section 238 corresponds to Section 40 of the present Regulation, and Section 557 to Section 82 and Order XLII, Rule 1.]

II. In regard to the new definition, the Notes on Clauses say :—

"The definition of decree does not introduce any great change. The only noteworthy addition in the existing definition is to state that there might be composite as well as simple, preliminary and final decrees, with a definition of what is a preliminary decree."

III. The new definition is the same as that in the British Indian Code of 1908. The Indian Special Committee observed in their Report :—" The importance of the definition of the word 'decree' rests on the fact that, by reference to it, the right of appeal is determined. ;The Committee have, in the main, adhered to the existing definition; but they have modified it in two respects, and this has involved a slight recasting of the language. The principal modification aims at permitting an appeal from an adjudication which purports to settle the rights of the parties, though it does not completely dispose of the suit. Such an adjudication the Committee describe as a preliminary decree.

" The Explanation is intended to make it clear that a decree may be partly final and partly preliminary. Thus a decree for the possession of immovable property and for mesne profits would be of this mixed character.

"'The word 'within' has been substituted for 'mentioned or referred to in' with a view to bring within the definition of decree, orders against sureties and orders as to court-fees in pauper suits and thus providing for appeals therefrom.

" The only other modification is for the purpose of excluding a right of appeal from an order of dismissal for default."

[See Section 109 of the Regulation and Order XXXIII, Rule 13].

IV. 1. " The decree supersedes the contractual relation by a command which is the voice of the Sovereign in the concrete case, just as a statute is the same voice in a general rule. Thus a relation constituted by a decree stands on the same footing as the firmest ownership." (8 Bom., 308).—
**22 T. L. R.,** *157* at 167.

2. " Property in decree is a very peculiar kind of property and is governed solely by the provisions of the Civil Procedure Code."— **6 T. L. J.,** *197* at 200.

3. " The decree or order of a Cou[rt does] not lose its finality simply because it i[s liable] to be set aside by further proceeding[s]
**18 T. L. R ,** *119* a[t]

**Case Law.**

1. An order rejecting a time-barre[d ap]peal is not a decree and no appeal lies [from] such an order (By majority). —
**3 T. L. R. App**

[*Vide* new definition above and S[ection] 86 *Infra*].

2. Under the present Code (Regu[lation] II of 1087) an order returning a plai[nt for] presentation to another Court must be [held] to be a decree for the purpose of an a[ppeal] against it. The Code is very defectiv[e as it] does not define the word "order" or [" dec]ree." An order returning a plaint is [ana]logous to an order rejecting the plaint
**5 T. L. R. App.**
[*Vide* Order XLII, Rule 1 (3).]

3. An order passed in an enquiry under Section 227 of the Civil Proce[dure] Code [new Section 43] falls under C[lause] (*b*) of Section 238 [new Section 40], [and] thus is a decree under Section 2 of [the] Code. Therefore, a suit to set aside a[n or]der passed in execution proceedings ma[king] the representatives of a deceased judgm[ent-] debtor liable to a decree passed against [the] debtor personally, on the ground that [the] representatives were in possession of as[sets] belonging to the estate of the decease[d, is] not maintainable (F. B.).— **11 T. L. R**

4. Money realized in execution of [a] decree was ordered to be paid to the ho[lder] of another decree.

*Held.*—The order was one as betw[een] rival decree-holders and did not fall un[der] Section 238 of the Civil Procedure C[ode] [new Section 40]. Such an order did [not] fall within the term " decree " as defi[ned] by the Code and no appeal or special ap[peal] lay against such an order. The remed[y of] the party aggrieved thereby, lay in a [suit] for refund of the money wrongly p[aid]

under Section 292 of the Civil Procedure Code [new Section 59].— **11 T. L. R.**, *161*.

**5.** A and B (the appellants) appealed against the District Judge's order disallowing, without trial, the objections raised by them to the delivery of property to C and D (the decree-holders) in execution of decree, and claimed the property under Court sales held subsequent to the date of the decree:

*Held.*—The objection was one which ought to have been disposed of under Section 320 of the Civil Procedure Code [=Order XXI, r. 96], after the claim was numbered and registered as a suit between C and D (the decree-holders) as plaintiffs and A and B (the objectors) as defendants.

* The omission of the lower Court to number and register a claim as a suit, was tantamount to a rejection of the plaint and the order of the lower Court was, therefore, appealable.— **13 T. L. R.**, *76*.

Dist.—17 T. L. R. App., 55.
Ex. —18 T. L. R., 18.
18 T. L. R., 166.

**6.** An order of abatement passed by an Appellate Court (which in the case included an order for costs also) is a final order from the date on which the limitation is to run for the execution of the decree of the original Court.

The definition of decree in the Civil Procedure Code includes the proceedings of the Court finally disposing of the suit so long as it remains upon the record.

The terms "decree" and "order" as used in the Limitation Regulation are not defined in the Regulation nor in the General Clauses Regulation and the definitions in the Civil Procedure Code are strictly speaking not applicable to the Limitation Regulation (F. B.).— **18 T. L. R.**, *119*.

Appl.—21 T. L. R., 191.
Ref. —25 T. L. R., 83.
Fol. —30 T. L. R., 239
(=4 T. L. J., 221).
6 T. L. J., 450.

**7.** When the representatives of the deceased plaintiff applied for permission to be brought on record and to prosecute the suit, the Munsiff passed an order of abatement under Section 350, Civil Procedure Code, [=Or. XXII, r. 3 (2)], on the ground of limitation bar. The District Court reversing the Munsiff's order directed the impleading of the petitioners and re-trial of the suit. On the contention of the defendant that no appeal lay against the order:

*Held.*—The order of abatement under the first part of Section 350 was appealable as it was virtually a decree and disposed of the plaintiff's claim as completely as if the suit had been dismissed. The order put the suit completely out of Court and was as final as formal adjudication on the merits until set aside. Thus, it fell within the definition of a decree and as such appealable.— **21 T. L. R.**, *191*.

Ref.—30 T. L. R., 239 (4 T. L. J., 221).
15 T. L. J., 226.

[Now not appealable—But see Or. XXII, r. 9.]

**8.** An order dismissing a suit at an adjourned hearing for non-appearance of the plaintiff or his Vakil is an order under Section 152 [=Or. XVII, r. 2] and its consequential Section 97 [=Or. IX, r. 8], and not under Section 153 [=Or. XVII, r. 3], C. P. C., and is appealable.— **22 T. L. R.**, *262*.

Dist.—25 T. L. R., 83.
14 T. L. J., 410.
Fol. —38 T. L. R., 122
(=13 T. L. J., 204).

[Now not appealable—But see Or. IX, r. 9.]

**9.** Where an appeal had been dismissed for default by the District Judge and where subsequently the petition for restoration of the appeal had also been dismissed:

*Held.*—The aggrieved party had no right of second appeal to the High Court, but his remedy was under Section 557, C. P. C., Clause 27, [=Section 82 & Or. XLIII, r. 1 (25)], to prefer an appeal from the order refusing to re-admit the appeal.

The effect of the order of dismissal for default by the lower Court seems to be that the appeal was simply struck off the file. It was equivalent to saying the Court refuses to entertain or to consider the appeal. The order is no doubt final; it is the formal expression of a decision of a Civil Court. It is not a decree; for if it were, there would be no need to make a special provision for it in Section 557 (27). It is not a decree because it is not 'an adjudication upon any right claimed'—an adjudication meaning a decision arrived at on a full consideration of the evidence and law in support of a claim.

An application for re-admission of an appeal is nothing more than a review of the order appealed against.— **23 T. L. R.**, *80.*

Fol.—25 T. L. R., 83.

**10.** An order dismissing an appeal for default under Section 527 C. P. C. [=Or. XL, r. 16], is not a decree and is therefore not appealable.

A decree must be an adjudication on the right claimed or defence set up on the merits or on a question of law affecting the merits and not an adjudication on a mere right or defence relating to matters of procedure (F. B.).— **25 T. L. R.**, *83.*

**11.** Where the lower Court dismissed the petitioner's (1st defendant's) application to value the suit according to the market value of the properties :

*Held.*—As the order in question did not decide the case, it could not be revised by the High Court under Section 568, C. P. C., [new Section 89]. The above order is not one against which an appeal is allowed by Section 557 [=Or. XLII, r. 1 and Section 82].— **K P.**, *247.*

Fol.—6 T. L. J., 60.

**12.** A decree was passed by the District Judge in a suit for settlement of partnership accounts defining the shares of and fixing the amounts due to each partner. The decree further provided that such of the partners, who were authorised to execu[te the] decree, should pay within 2 months [from] the date of preparation of the decre[e the] Court-fee payable on the sum of m[oney] awarded them by the decree, and on fa[ilure] of payment within the time so fixed should not execute the decree. This d[ecree] was passed on the 18th Chingom [...] Against this decree two appeals wer[e pre]ferred, and in appeal an order was p[assed] on the 1st Meenom 1082, which, *inter [alia]* altered the shares of the several partn[ers] fixed by the Court of first instance, directed accounts to be taken for ascer[tain]ing the exact amounts that will be d[ue to] each partner on the footing of the findi[ngs of] the Appellate Court as regards the nu[mber] of shares of the several parties. Subse[quent] to this order the original plaintiff died [and] his representatives were not imple[aded] within the time allowed by law. On [the] 3rd of Mithunom 1084, the Appellate C[ourt] held that the appeals had abated, and [dis]missed both the appeals.

The 4th defendant and the legal r[epre]sentatives of the 5th defendant appli[ed to] the Court of first instance on 4—7—108[.. for] execution of its decree and prayed fo[r ex]tension of the time fixed for paymen[t of] court fee due from them. The Court g[rant]ed their prayer. On appeal :

*Held.*—(1) The provison in the ori[ginal] decree fixing the time within which c[ourt] fee was to be paid was a surplusage, an[d the] penalty provided for non-payment of C[ourt] fee was illegal.

(2) The Court was competent to ex[tend] the time for payment of Court fee even [after] the expiry of the period originally fixe[d].

(3) The decision of the High Court, d[ated] 1st Meenom 1082, was a decree as de[fined] by Section 2, C. P. C., for that decision [is] the formal expression of an adjudic[ation] upon the right, namely, the right of t[he parties] declared to have a particular share clai[med] in the appeals. That decision may, in [any] case, be regarded as a preliminary judg[ment] which is binding upon the parties. [The] binding force of such a judgment dep[ends] upon general principles of law.

(4) The decree of the Court of first instance was superseded by the preliminary order of the High Court, dated 1-8-82, in respect of the shares to which each partner was entitled, and that order was binding on the parties.— **1 T. L. J.**, *169.*

Ref.—2 T. L. J., 163.

**13.** Orders allowing a suit or an appeal to be withdrawn are not decrees as defined in the Civil Procedure Code, and are, therefore, not liable to appeal as decrees. They are also not orders against which an appeal is provided for by Section 557, C. P. C., [=Section 82 and Or. XLII, r.1] and hence such orders are liable to revision by the High Court.— **2. T. L. J.**, *364.*

**14.** Whatever may be the rights of the manager or the other members of a joint Hindu family to deal with co-parcenary property, the property in decree is a peculiar kind of property and is governed solely by the provisions of the Civil Procedure Code; and, therefore, a decree cannot be assigned by any one except by the person who appears on the record as the person in whose favour the decree has been made or by some person whom the Court has by order recognised as the decree-holder from the original plaintiff or his representative.

Members of a joint Hindu family cannot be regarded as representing each other even during their life-time, so as to make each competent to validly assign decrees made in favour of any other.

An assignment of a decree made by unauthorised persons cannot be subsequently ratified by the decree-holder, when the same has not been made for and on behalf of the latter, especially when the ratification will prejudice creditors who have attached the decree before the ratification.— **6 T. L. J.**, *197.*

**15.** An order passed in execution of a decree rejecting a petition praying for impleading the legal representative of the decree-holder is not a decree having the effect of *res judicata* in a subsequent suit.— **32 T. L. R.**, *134.*

**16.** A suit was withdrawn without permission being obtained to file another as mentioned in the second paragraph of Section 357 C. P. C. [=Or. XXIII, r. 1].

*Held.*—An order passed on such a withdrawal was not an appealable order under Section 557 [=Section 82 & Or. XLII, r. 1].

Such an order was not a decree.— **7 T. L. J.**, *6.*

**17.** An order rejecting an appeal under Section 521 of the Civil Procedure Code [=Or. XL, r. 10] for failure to deposit the costs of the respondents in appeal within the time allowed for the same is neither a decree as defined by Section 2 nor an order falling within any of the Clauses of Section 557. An appeal on the above order is incompetent.—

**33 T. L. R.**, *284*
(=**7 T. L. J.**, *381*).

Rel.—13 T. L. J., 396.
Fol.—16 T. L. J., 80.

**18.** Plaintiff, who got a decree, obtained delivery of properties in execution. In appeal, the decree was discharged and the suit remanded for impleading additional parties.

The defendants applied for the properties being re-delivered to them. The lower Court refused this prayer and allowed the plaintiffs to be in possession on their giving security for mense profits.

*Held* (on appeal by defendants).—Though an order under Section 583 [=Or. XL, r. 22] may not be a decree when the question is what is the nature of the appeal that should be filed from such an order, yet it satisfies all the other requisites of a decree as defined in Section 2. The Civil Procedure Code is not exhaustive; and though in terms Section 552 [new Section 108 (1)] would not apply, yet by analogy, its provisions must be extended to an order under Section 583.

As the decree in favour of the plaintiff had been reversed he must restore the benefit he had derived under that decree and the defendants' right to claim restitution was one which the Court has no discretion to refuse.

"A decree of reversal by an Appellate Court contains, by necessary implication, a direction to the Court below to cause restitution to be made of all the benefits of which the successful party in the appeal was deprived by the enforcement of the erroneous decree of the Court of first instance." "The legal effect of a decree of reversal is that the party against whom the decree was given is to have restitution of all that he has been deprived of under it." "The granting of restitution is not desoretionary; and the principle upon which the doctrine rests is that on reversal or supersession of the decree, the law raises an obligation on the party who received the benefit of the erroneous decree to make restitution to the other party for what he had lost".—

**38 T. L. R.,** *274* **(12 T. L. J.,** *296*).

Ref.—14 T. L. J., 352.

**19.** The District Court by a judgment dismissed an appeal before it for failure of the appellant to comply with an order directing him to deposit the day's costs of the respondent. A decree was also prepared in accordance with the judgment. A second appeal was preferred to the High Court.

*Held.*—No second appeal lay as there was in law, no decree passed by the District Judge in the appeal before him. The order dismissing the appeal was neither a decree as defined by Section 2 of the Civil Procedure Code nor an order falling within Section 557 [=Section 82 and Or. XLII, r. 1] of that Code, and was, consequently, not appealable.— **13 T. L. J.,** *396.*

**20.** The original plaintiff having died, the present petitioners were impleaded as his legal representatives. On a subsequent date the defendant petitioned that these petitioners had been wrongly brought on record, and the Court, holding that the suit had abated on the death of the original plaintiff, directed the removal of the present petitioners from the array of parties.

*Held.*—The order directing the ment of the suit was virtually a decr was therefore appealable as such.—

**15 T. L.**

[See 21 T. L. R., 191, *Supra.*]

**21.** Section 3 of the Succession ficate Regulation does not permit a tional decree being passed (for exa that a decree may be given subject production of a succession certificate the plaintiff applies for execution).—

**16 T. L. J.**

**22.** A hypothecation decree whic rects the sale of immovable property, immovable property; it is only a deor the payment of money.

A hypothecation decree cannot be re ed as a mere chattel as its value lies r its aspect as a movable but in the right it confers on the holder of it of realisin fruits of it by process of execution. decree comes under the category of ac able claims, and with respect to tran of such claims there is the implied warr of title recognised by Section 109 of Indian Contract Act, and the seller of a claim is also taken to covenant tha will do nothing in derogation of his dee

**42 T. L. R.,** *348* **(16 T. L. J.,**

**23.** Though the word "decree" as fined in Section 2, Clause (2), includes determination of a question under Sect 40, such determination must be a conclus determination. An interlocutory orde execution is no decree. "An interlocut order in the course of the execution proce ing which decides, for instance, a point law arising incidentally or otherwise, is a decree within the meaning of Section 2 the Code. It is reasonably plain from t terms of the Section that an order to b decree must conclusively determine t rights of the parties. If any other view w adopted, the result would be that an a peal would be preferred against every ord in the course of execution proceedings, other words, proceedings in execution cou be arrested at every stage by an appeal behalf of the judgment-debtor. This coul

(3) "Decree-holder" means any person in whose favour a decree has been passed or an order capable of execution has been made :

(4) "District" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a "District Court") :

(5) "Foreign Court" means a Court having no authority in Travancore :

---

hardly have been contemplated by the framers of the Code" (18 Cal., 469).

The order appealed against in the case was an interlocutory one as the question raised in execution, namely, whether the appellant's application for execution was barred under Section 41 of the Code had not been determined.— **18 T. L. J.**, *200*.

**24.** An award passed by the District Court or the High Court in appeal under the Land Acquisition Regulation, is tantamount to a decree within the meaning of Section 2 (2) of the Civil Procedure Code, and is capable of execution.—

**44 T. L. R.**, *30* (=**18 T. L. J.**, *254*).

**25.** A decree based upon a compromise is as effective and valid a decree as that on contest.— **18 T. L. J.**, *1276*.

**26.** An award of Court is a decree and the procedure applying to execution of decree applies.— **19 T. L. J.**, *602*.

**27.** The fact of a decree being drawn up in a suit which was dismissed for default of appearance cannot alter the nature of the order which depends upon the circumstances in which it was made, and make it appealable.— **19 T. L. J.**, *751*.

**28.** See also—

Sec. 116.—**2 T. L. J.**, *163*.

Or. XXI, r. 8.—

**43 T. L. R.**, *455* (=**17 T. L. J.**, *653*).

„ r. 14.—**19 T. L. J.**, *439*.

„ r. 64.—**43 T. L. R.**, *429* (=19 T. L. J., 491).

**19 T. L. J.**, *530*.

Or. XXIII, r. 3.—

**36 T. L. R.**, *183* (=**10 T. L. J.**, *181*)

---

**Sec. 2** (3): **1.** The term was defined as follows in Regulation II of 1065:—" 'Decree-holder' means any person in whose favour a decree or any order capable of execution has been made, and includes any person to whom such decree or order is transferred."

**2.** For the construction of the term, see 36 T. L. R., 1, and 6 T. L. J., 197, under Order XXI, Rule 14, *Infra.*

**Sec. 2** (4): See Note under Section 3 *Infra.*

**Sec. 2** (5): I. In Regulation II of 1065, the term was defined as follows :—" 'Foreign Court' means a Court situate beyond the limits of Travancore." This was reproduced in the original Bill. The Select Committee substituted the existing new definition. They said :—"The Agent to the Governor-General may hold a Court within the limits of Travancore. The definition as it stands may not exclude such a Court. Hence the amendment."

II. In the British Indian Code, Foreign Court "means a Court situate beyond the limits of British India which has no authority in British India and is not established or continued by the Governor-General in Council."

(6) "Foreign judgment" means the judgment foreign Court :

(7) "Government pleader" means a Sirkar Vakil includes also any Officer' appointed by Our Government to per all or any of the functions expressly imposed by this Code on Government pleader :

(8) "Judge" means the presiding Officer of a Civil C

(9) "Judgment" means the statement given by the J of the grounds of a decree or order :

(10) "Judgment-debtor" means any person against w a decree has been passed or an order capable of execution has made :

(11) "Legal representative" means a person who in represents the estate of a deceased person, and includes, where a p sues or is sued in a representative character, the person on wl the estate devolves on the death of the party so suing or sued :

---

**Sec. 2** (7): The British Indian Code has the following :—"Government Pleader includes any officer appointed by......... ..imposed by the Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader."

**Sec. 2** (8): I. The definition follows the British Indian Code. The old definition was :—" 'Judge' means the presiding Officer of a Court," which was the same as in the Indian Code of 1882.

II. Section 19 of the Civil Courts Regulation says :—"No District Judge or Munsiff shall try any suit to or in which he is a party or personally interested, or shall adjudicate upon any proceeding connected with or arising out of such suit.

No District Judge shall try any appeal against a decree or order passed by himself in another capacity.

When any such suit, proceeding or appeal comes before any such Officer, he shall report the circumstances to the Court to which he is immediately subordinate.

The superior Court shall thereupon dispose of the case in the manner prescribed by the Code of Civil Procedure (Regul II of 1065)."

III. The Civil Courts Guide has th lowing Rules :—"502. Judges and Mu are strictly prohibited from trying wit the sanction from the High Court, sui cases to which their creditors or debtor directly or indirectly parties. All cases must be reported for the orde the High Court."

Rules 503 and 504 prohibit taking as ment of actionable claims and purcha property in Court auction.

**Sec. 2** (10): Regulation II of 1065 d ed the term thus:—" 'Judgment-del means any person against whom a de or order has been made."

See—

Part II, Execution (General).—

**43 T. L. R.**, *136*
(=**18 L. J.**, *3*

Or. XXI, r. 14.— **16 T. L. J.**, *264.*

**Sec. 2** (11): I. This is new, and Notes on Clauses say :—"This has now b defined so as to conform to the views pressed in judicial decisions."

(12) "Mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession :

(13) " Order" means the formal expression of any decision of a Civil Court which is not a decree :

(14) " Pleader " means any person entitled to appear and plead for another in Court :

---

The Indian Code has the following words after the words "and includes"—"any person who intermeddles with the estate of the deceased and." These words have been omitted in the Regulation "as they would, if retained, unduly enlarge the scope of the term defined."— *S. C. R.*

II. In the Indian Code of 1882, there was no such definition. In the present Code, it was inserted by the Special Committee, and they said in their Report :—"The expression has been variously interpreted by the High Courts as would appear from the reported cases which are not easily reconcilable with one another. The Committee trust that the definition which has been added by them will set at rest what owing to the absence of any such definition from the present Code is a somewhat debatable point."

**Sec. 2** (12): I. As in Section 211 of the Indian Code of 1882, this definition formed the Explanation to the corresponding Section 206 [=Or. XX, r. 12] in Regulation II of 1065. In the new Code, "the definition which is of general application has been removed to its proper place from the Explanation."

The definition in Regulation II of 1065 was as follows :—" 'Mesne profits' of property mean those net profits which the person in wrongful possession of such property actually received, or, might, with ordinary diligence, have received therefrom ". The definition in the Indian Code of 1882 from which the above definition was taken, had at the end the words " together with interest on such profits ". These words were omitted from the above definition " for the reason that no interest is allowed on mesne profits by the recognised custom of the country ".— *S. O. & R., Para 29.*

II. The new definition reproduces that in the present Indian Code. In regard to the addition of the words " but shall not include......possession ", the Indian Special Committee observed that they " have altered the definition of 'mesne profits' so as to exclude from the calculation any increased rents and profits due to improvements made by the person in wrongful possession for which he cannot at present claim compensation from the rightful owner either by way of mitigation of damages or otherwise".

**Sec. 2** (13) : **Case Law.**

Orders passed by the trial Court from time to time in purely interlocutory matters are not matters subject to review. The provisions of the Civil Procedure Code relating to reviews apply only to orders which satisfy the definition of an order in Section 2 of the Code. Such an order must be a decision, *i. e.*, decision in a case or any part of a case. The order to examine a witness or to take a plan of the disputed property does not decide any part of the case before the lower Court. The order which led to the appeal before the lower Court was not an order passed on a review, and hence Rule 1 of Clause 27 of Order 42 did not apply to it.— **19 T. L. J.**, *865.*

(15) "Prescribed" means prescribed by Rules :

(16) "Public officer" means a person falling under a of the following descriptions namely :—

(*a*) every Judge ;

(*b*) every officer holding a Commission from Us ;

(*c*) every officer of a Court of Justice whose dut is, as such officer, to investigate or report any matter of law or fact, or to make, auth ticate or keep, any document, or to take cha or dispose of any property, or to execute a judicial process, or to administer any oath, to interpret or to preserve order, in the Co and every person specially authorised by Court of Justice to perform any of such duti

(*d*) every person who holds any office by virtue which he is empowered to place or keep a person in confinement ;

(*e*) every officer of Our Government whose duty is, as such officer, to prevent offences, to gi information of offences, to bring offenders justice, or to protect the public health, saf or convenience ;

(*f*) every officer whose duty it is, as such officer, take, receive, keep or expend any property behalf of Our Government, or to make a survey, assessment or contract on behalf of O Government, or to execute any revenue-proce or to investigate, or to report on, any matt affecting the pecuniary interests of Our Gover ment, or to make, authenticate or keep a document relating to the pecuniary interests

---

**Sec. 2** (16) : 1. The Explanation is an addition, not found in Regulation II of 1065.

2. The expression "Public Officer" which has been defined in the Civil Procedure Code and embraces every officer in the service or pay of Government or remunerated by fees or commission for t performance of any public duty, covers t case of a Maistry of the Department Public Works.—

**38 T. L. R.,** *23* **(11 T. L. J.,** *50*

Our Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Our Government; and

(*g*) every officer in the service or pay of Our Government, or remunerated by fees or commission for the performance of any public duty:

*Explanation.*—Persons employed by Our Government to discharge the duties of any office in a temple or other Religious Endowment are within the definition.

(17) "Rules" means Rules and Forms contained in the First Schedule or made under Section 91:

(18) "Share in a corporation" shall be deemed to include stock, debentures or bonds: and

(19) "Signed", save in the case of a judgment or decree, includes stamped.

Subordination of Courts.

3. For the purposes of this Code, the District Court is subordinate to the High Court and every Civil Court of a grade inferior to that of a District Court is subordinate to the High Court and District Court.

---

**Sec. 2** (19): The definition follows the British Indian Code. In Regulation II of 1095, "'Signed' includes marked, when the person making the mark is unable to write his name; it also includes stamped with the name of the person referred to".

**Sec. 3** [=S. 2=*S. 3*]

I. In Regulation II of 1065, as in the Indian Code of 1882, this Section formed part of the definition of "District Court". In the present Indian Code, this has been made an independent Clause, "as the subordination of Courts is not strictly a matter of definition". This arrangement has been adopted here.

II. The definition in Regulation II of 1065 was as follows:—

"'District' means a Zillah or the local limits of the jurisdiction of a principal Civil Court of original jurisdiction: "District Court" means a Zillah Court; every Court of a grade inferior to that of a District Court shall, for the purposes of this Code, be deemed to be subordinate to the High Court and the District Court".

III. Sections 10 and 11 of the Civil Courts Regulation may be noted here:—"10. The District Court shall be deemed to be the principal Civil Court of original jurisdiction within the local limits of its jurisdiction.

"11. The District Court, shall, subject to the general control of Our High Court, have control over all Munsiffs' Courts within the limits of its jurisdiction".

**Case Law.**

1. The Court of a District Munsiff has no jurisdiction to stay proceedings in a Criminal Court. The Munsiff's Court has no jurisdiction over Magistrates' Courts nor is the Magistrate's Court a Court subordinate to the Munsiff's.— **19 T. L. J.,** *375.*

2. See also—
Or. XXXVII, r. 1.—**12 T. L. J.,** *311.*

Savings.

4. In the absence of any specific provision to the contr nothing in this Code shall be deemed to lim otherwise affect any special or local law no force or any special jurisdiction or power conferred, or any sp form of procedure prescribed, by or under any other law fo time being in force.

Pecuniary jurisdiction.

5. Save in so far as is otherwise expressly provided, notl herein contained shall operate to give any C jurisdiction over suits the amount or valu the subject-matter of which exceeds the pecuniary limits (if any its ordinary jurisdiction.

Provisions inapplicable to suits tried as Small Causes.

6. The following provisions shall not extend to suits trie Small Causes under Regulation II of 1084, t is to say,—

(a) so much of the body of the Code as relates tc

(i) suits specified in Schedule No. II of Travancore Civil Courts Regulation 108

(ii) the execution of the decrees in such su and

(b) the following Sections, that is to say,—

Sections 71 and 72,

Sections 74 and 75 so far as they relate to junctions and interlocutory orders, and Secti 76 to 86.

---

Sec. 4 [ = „ = S. 4 ]

Sec. 5 [ = „ = S. 6 ]

Sec. 6 [ =S. 4 = S. 7 ]

In Section 7 of the British Indian Code, there is also the following Sub-clause to Clause (a) :—" (iii) the execution of decrees against immovable property." The original Bill had adopted this Sub-clause also. the Select Committee deleted it. They served :—" Immovable property may proceeded against in execution of Sr Cause decrees under certain circumstan Hence the amendment."

Case Law.

See Or. V, r. 17.— 18 T. L. J., 9

## PART I.

### Suits in General.

*Jurisdiction of the Courts and Res Judicata.*

**7.** (1) No person shall, by reason of his descent or place of birth, be in any civil proceeding exempted from the jurisdiction of any of the Courts.

Courts to try all civil suits unless barred.

(2) The Court shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is barred by any enactment for the time being in force.

*Explanation.*—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

---

**Sec. 7** (1) [ = S. 6 = „ ]

„ (2) [ = S. 7 = S. 9 ]

I. **1.** Sub-section (1) is the same as Section 6 of Regulation II of 1065. The British Indian Code has omitted this provision. The Indian Special Committee observed :—"The provisions contained in Section 10 of the Code were first enacted by Act XI of 1886 and were reproduced in the Code of 1859 and in subsequent Codes. In the opinion of the Committee, their retention is no longer necessary and they have been omitted."

**2.** The original Bill had omitted the provision. But the Select Committee restored the old Section, as they "thought it necessary to retain the same." Instead of making it a separate Section, the Committee made it a Sub-section.

**3.** Section 6 of the Civil Procedure Code [new Section 7 (1)] cannot be construed to mean that Civil Courts have unlimited jurisdiction in insolvency matters. The object of the Section is sufficiently indicated by the use of the words "by reason of his descent or place of birth." It refers only to personal jurisdiction [ 28 T. L. R., 87 (3 T. L. J., 45) ].

See also 10 T. L. J., 117, under Section 19 *Infra*.

II. **1.** Sub-section (2) is the same as Section 7 in Regulation II of 1065; only the words used in the old Regulation in the beginning were "The Courts" and not "The Court." In the Indian Code also, the word "Court" is used in the plural.

**2.** In the Indian Code of 1882, the corresponding Section 11 was the same as Section 7 of the 1065 Regulation. In the present Indian Code, the wording is :—"The Courts shall......excepting suits of which their cognizance is either expressly or impliedly barred." There is no difference in the wording of the Explanation.

It may be noted that the original Bill adopted the wording of the present Indian Code. But the Select Committee "thought it desirable to retain the wording of the Section as in the old Regulation."

**3.** The words "barred by any enactment for the time being in force" were omitted in the present Indian Code, because the

words made the Section too wide. 'It excludes only suits 'barred by any *enactment*'. There are many matters of a civil nature which are barred by general principles of law, such as those relating to Acts of State and public policy." The words were held to mean "expressly barred." They were therefore omitted, and the words "expressly or impliedly barred" substituted in their place.—

*India Gazette dated 21-12-1901, Pt. V.*

**Sec. 7** (2) : **Case Law.**

**1.** The Code of Civil Procedure providing that "the Civil Courts shall take cognizance of all suits of a civil nature with the exception of suits of which their cognizance is barred by the laws or customs of Travancore" (Regulation II of 1037), it is for the defendant to show that the Courts have no jurisdiction and not for the plaintiff to show that they have.—**1 T. L. R.,** *57.*

**2.** Rights to offices are real property under the Hindu Law, and as such, suits in respect of them are cognizable by Civil Courts. The mere fact that the Royal Proclamation remitted the taxes once levied upon such offices does not prove that the exercise of private rights has been legally interdicted.— **3 T. L. R.,** *56.*

Fol.—17 T. L. R., 154.
3 T. L. J., 269.

**3.** A suit for declaration of title to hold the office of Purohit is cognizable by the Civil Courts and pecuniary claims in respect thereof are enforceable in a Court of Law.— **4 T. L. R.,** *37.*

**4.** A claim for fees the levy of which was forbidden by law could not be upheld and the levy of fees for the performance of the duties of Ashan (chieftain of Elavar and other castes) was illegal.

The claim for damages for loss of dignity could not be entertained.— **4 T. L. R.,** *70.*

**5.** Civil Courts can take congnizance of suits relating to public revenue, if the revenue executive officers could be shown to have acted contrary to any existing r acquired under the laws promulgated by Government in its legislative capacity.— **8 T. L. R.,**

Ref.—16 T. L. R., 155.
26 T. L. R., 30.

**6.** Though the passing of a legisla enactment by the Sirkar, in the exercis its legislative functions, cannot be questio in a Civil Court, the enforcement of t enactment in the performance of its (S kar's) administrative duties, against a s ject or class of subjects, who or wh claims an exemption from the operat thereof, may be questioned in the C Courts.— **8 T. L. R.,** *1*

Fol.—16 T. L. R., 155.

**7.** The position of the Edappally chie analogous to that of a Zemindar on the E Coast and he is not entitled to exempti from the jurisdiction of the ordinary Ci Courts of this State.— **14 T. L. R.,**

**8.** The right to enter a temple and w ship there is a personal right vesting indi dually in each member of a caste or co munity according to his status and qualific tions and coming within the scope of t maxim "*Actio personalis moritur cum pe sona*", and Civil Courts are bound to a judicate upon such questions, irrespecti of the decision of the Executive Gover ment.— **14 T. L. R.,** *15*

Fol.—31 T. L. R., 113 (5 T. L. J., 31

**9.** A suit involving the question of t liability or otherwise of certain lands f the payment of tax or cess claimed by t plaintiff is of a civil nature. Section 52 the Revenue Recovery Regulation does n apply to claims by the private assignees public revenue. The question in the ca was not as to the rate but as to the right t levy any assessment, and the Governme whose rights are intended to be protecte by the above Section had expressly referre the parties to a civil suit for the determi ation of the plaintiff's claim to levy the ce or tax. Civil Courts have jurisdiction t

TRIVANDRUM PUBLIC LIBRARY



try questions of liability to the public revenue(F. B.)— **16 T. L. R.,** *19.*

Ref.—2 T. L. J., 152.

**10.** When the opinion of a religious authority on a point of caste usage is made the ground of interference with civil rights, the Courts have jurisdiction to enquire into the religious or caste usage and even into the religious foundation on which the interference is based. In such an enquiry, it must be shown not only that the authority concerned had jurisdiction but also that he made the pronouncement after hearing the person whose rights are affected by the same.— **16 T. L. R.,** *135.*

**11.** There is a distinction between the acts of Government in its legislative and administrative or executive capacity. The latter class are within the cognizance of the Civil Courts of the country. When the executive acts happen to be contrary to law, it is the duty of the judicial power of the Sovereign which is represented by the Courts, to interfere and set them right. If the Courts have no jurisdiction over the wrongful acts of the Executive the subject will often remain without any remedy for infringement of his rights. The Courts, in sitting in judgment over such acts, 'simply act in obedience to the legislative and judicial will of the Sovereign' (F. B.).—

**16 T. L. R.,** *155.*

Ref.—26 T. L. R., 30.

**12.** The real question in dispute in the case being one relating to the cubic contents of a Kotta measure in Parahs, was not a question as to the rate of land revenue. The maintainability of the suit was not therefore prohibited by Section 52 of the Revenue Recovery Regulation (F. B.).—

**26 T. L. R.,** *30.*

**13.** Section 7 of the Civil Procedure Code refers only to suits and not to proceedings other than suits. Civil Courts have no jurisdiction to entertain and dispose of petitions in insolvency matters otherwise than as provided for in the Code.—

**28 T. L. R.,** *87.*

**14.** Certain lands in Travancore, belonging to the Tripunithura Devaswom, whereof His Highness the Raja of Cochin was the trustee, were originally assessed to revenue, but the disputes regarding the liability of the properties for tax were settled by mutual agreement between the Cochin Government and the Travancore Government. By this agreement, the arrears were agreed to be written off, and the practice was agreed to be continued in future. In the recent Revenue Settlement, the properties were assessed to revenue. In a suit brought by the Dewan of Cochin for a declaration that the imposition of tax was illegal, it was contended, on behalf of the Travancore Government, that the agreement was a political transaction, of the nature of a treaty between two independent States, and that, therefore, the Civil Courts had no jurisdiction to entertain the suit.

*Held* (Over-ruling the contention).—The agreement was not a political, but an executive act. Even if it be regarded as a treaty obligation, the Civil Courts had jurisdiction under Section 7 of the C. P. C., as the suit was one of a civil nature, whose cognizance was not barred by any legislative enactment.— **2 T. L. J.,** *152.*

**15.** The registry of Poramboke land in the name of a person by Government is an act done by Government in their executive capacity and not under the Land Conservancy Regulation, and therefore Section 17 of that Regulation was no bar to a suit to set aside such a registry. Orders mentioned in Section 17 have reference only to those that are made for the protection of Government interests by way of exactions, fines and penalties and assessments prohibitory or otherwise.

Government being the absolute proprietor of all Poramboke lands can dispose of them in any manner they please.—

**31 T. L. R.,** *57* (**5 T. L. J.,** *227*).

**16.** In pursuance of a decision in a Smartha enquiry, the plaintiff, a member of a Marumakkathayam Nayar Tarwad was

declared an outcaste and the first defendant, Sirkar, directed the second defendant, the Karanavan of plaintiff's Tarwad, to perform the Jeeva Sradhom of plaintiff and to dissociate him from all social functions and to forbid his residence in the Tarwad house. The Sirkar also declared that the plaintiff could not enter temples for purposes of worship. Plaintiff sued for a declaration that the decision in the Smartha enquiry was not binding on him on the ground that the persons who held the Smartha enquiry declared him guilty without taking his explanation or hearing him. The defendant Sirkar contended that the Civil Courts were not competent to question the legality of the order passed by Government inasmuch as the Smartha enquiry, based as it was on customary law, was properly conducted. The District Judge gave a decree as sued for holding that the Civil Courts were competent to question the legality of the order and that, as the decision in the Smartha enquiry was passed behind the back of the plaintiff, it was against natural justice.

*Held.*—The District Judge's decision was correct.

*Per Hunt, O. C. J.*—The right to enter a temple for the purpose of worship is a civil right which is vested in every member of a caste or community entitled to worship in such temple. The right is a purely personal one and gives a person whose right is infringed a remedy by way of suit.

*Per Viraraghava Aiyengar, J.*—A decision in a Smartha enquiry excommunicating a person behind his back on the strength of statements made against him and to which he was no party is opposed to natural justice and cannot be upheld.—

**31 T. L. R.**, *113* (**5 T. L. J.**, *311*).

**17.** The lands in suit formed portion of a large area of rainfed paddy lands in respect of which remission of tax for the Kanni crop was made on the ground of the lands lying fallow. This remission was being granted for a long time past, and the Government in their Proceedings (No. 11410/ L. R., dated 22-8-1909—Page 2150, Vol. Appendix II, Final Report on the Reven Settlement) allowed these lands to enj the benefit of the fallow remissions. T plaintiff, having been compelled to p the tax for the Kanni crop of 1087 in respe of the lands in suit which had lain fallo sued to recover the amount so paid. It w contended, *inter alia*, that the plaint could not, as a matter of right, insist up remission of tax, and that the Civil Cour had no jurisdiction to entertain such a sui

*Held.*—By long-standing usage fully r cognised as valid and binding by the G vernment in their Proceedings, these lan had a right to enjoy the benefit of fallo remissions. The lands having lain fallo for the Kanni crop of 1087, the tax f that crop was wrongly levied. The su being one for the recovery of money wron ly levied, the Civil Courts had jurisdictio There is no wrong without a remedy. N legal enactment was referred to on behal of the Sirkar which had the effect of oust ing the jurisdiction of the Court in cases o this description.— **5 T. L. J.**, *31*

Dist.—34 T. L. R., 98 (8 T. L. J., 260)

**18.** Suit by a Gowda Saraswat Brahmi for damages for wrongful expulsion fro membership of the Samooham of the Saraswat Brahmins of Parur, and for the wrongful act of the defendants in preventing hi from performing *Upakarmam* in the templ owned by the Samooham. Plaintiff, *inter alia*, also claimed damages for the loss of reputation entailed by the act of the defendants. Both the lower Courts dismissed the suit holding that it was of a nature not cognisable by the Civil Courts.

*Held* (in second appeal).—The suit was not outside the cognisance of Civil Courts.

"It seems difficult to maintain on principle that the membership of a Yogam or Samooham, is an interest unprotected by law, and may therefore be violated without incurring any legal liability. A Yogam or Samooham, like the one in question, is in

essential respects analogous to an incorporated members' club. Both are voluntary associations of persons each of whom contributes to the funds out of which the expenses of conducting the societies are paid ........The members for the time being are jointly entitled to all the properties and funds of the Association, but their individual interests remain incapable of realisation until a dissolution takes place. Until then, their rights are merely to enjoy the use of the premises of the association and other privileges (if any) in accordance with the Rules so long as they duly pay their subscriptions and continue to be members".

"Yogams or Samoohams again have in common with clubs a certain measure of legislative autonomy. They may, within limits, lay down laws unto themselves to regulate many matters of constitution and internal management........These Rules operate as conventional law. They form part of the contract between the members ........An irregular or improper expulsion of a member from a Samooham or Yogam would, as in the analogous case of clubs, be remedied by our Courts. And this jurisdiction would be rested, as the Courts of Equity in England rest their jurisdiction to interfere in cases of wrongful expulsion from clubs, on the right of property vested in the member, of which he is unjustly deprived by the unlawful expulsion".

"If two or more persons agree to associate with one another they may either intend that the agreemet shall create legal rights and duties or they may not. In the latter case, the privilege of association is out of the pale of legal protection. In the former case, if the association does not possess property, there is no foundation for the exercise of the equitable jurisdiction of the Courts. But an action for damages would probably lie for breach of contract, if a member be wrongfully expelled. If however the association be possessed of property the equitable remedies of injunction and specific performance would be available to a member who is wrongfully expelled from it. Property in this connection would seem to include the rights obtained by members in consideration of their having paid their subscriptions to participate in the benefits of the society according to its Rules including the right of vote".

"As to the extent of the jurisdiction of Courts, the law is that where the Rules of the association provide for expulsion if the power be exercised in good faith for the benefit of the association, in strict conformity with its Rules, and in accordance with the principles of natural justice, the Court will not further interfere with its autonomy".

An action for damages for loss of reputation owing to a member's wrongful expulsion from a Yogam is also one that could be taken cognizance of by Civil Courts.—

**31 T. L. R.,** *173*
**(=5 T. L. J.,** *369*).

**19.** Plaintiff's suit was against the Sirkar for money, being the value of three court fee stamps and one general revenue stamp which became spoiled and unfit for use, after they were purchased by the plaintiff, or in the alternative for the recovery of other stamp papers in their place. An application made to the Division Peishkar under Section 51 of the Stamp Regulation for refund of the amount sought to be recovered was rejected by that Officer on account of the plaintiff's refusal to substantiate his claim, as he was required to do.

The defendant, Sirkar, contended that the Civil Courts had no jurisdiction to entertain the suit, that even if they had, the plaintiff could not effectively invoke it, until he had exhausted all the remedies available to him under the Stamp Regulation, that the Peishkar was quite within his rights in calling for evidence to satisfy himself as to how the stamps got spoiled and that the effect of the plaintiff's refusal to act in accordance with the requisition is to put himself out of court.

*Held.*—A party aggrieved by the refusal of a Division Peishkar to grant any relief

under Section 51 of the Stamp Regulation had no right to institute a suit in the Civil Court against the Sirkar or the Division Peishkar in respect of such relief.

Section 51 of the Stamp Regulation does not cast a duty on the Division Peishkar or create a correlative right in favour of an aggrieved party, but merely confers a power on the former which is exercisable in his discretion.--

*Per Kochukrishna Marar, J.*--Section 7 makes it clear that two conditions must exist to invest Courts with jurisdiction over suits. They are (1) the suits must be of a Civil nature; and (2) they must be such that their cognizance is not barred by any enactment for the time being in force. In order that a suit may be of a civil nature, it must be one based upon a *right* falling within the domain of private law and vested in the plaintiff. Likewise, a civil action is described as 'a proceeding in a Court of Justice in which one party, known as the plaintiff, demands against another party, known as the defendant, the enforcement or protection of a private right or the prevention or redress of a private wrong.' What is given by Section 51 of Regulation IV of 1080 is not a *right*, but a mere concession, which is incapable of forming the basis of any suit which could be called a suit of a civil nature.-- **34 T. L. R.**, *68* (=**8 T. L. J.**, *169*).

**20.** In dealing with references made to the Civil Courts under Section 27 of the Land Acquisition Regulation, the Courts have jurisdiction only to settle disputes as to the apportionment of the compensation amount or as to the persons to whom the same or any part thereof is payable.

A Civil Court acquires jurisdiction to exercise the powers conferred under Section 29 of that Regulation only when the Land Acquisition Officer makes a reference under Section 18 of that Regulation (F. B.).--

**35 T. L. R.**, *211.*

**21.** The plaint property was alleged to be in the possession of the plaintiffs as owners and, in the dispute regarding the right to pay the tax for the property, the Tahsil decided in favour of the plaintiffs. T Dewan Peishkar set aside the order of t Tahsildar and decided that the defend is the person entitled to pay the tax of t plaint property and directed that the la register be prepared accordingly. The s was for setting aside the order of the Pei kar and restoring that of the Tahsildar.

*Held.*--The suit as framed was not mai tainable and the proper course for the pla tiffs was to have sued for a declaration their title and possession.

*Per Raman Tampi, J.*--The prayer the plaintiffs virtually amounts to one for mandatory injunction directing the Sirk to enter the plaintiffs' names in the Thand per and to levy the Sirkar tax from ther Such a prayer cannot be granted in t present suit to which the Sirkar is not party.

Whether a Civil Court has jurisdiction set aside an order like the present one.--

*Quær*

*Per the Chief Justice.*--As the order the Dewan Peishkar impeached in the su has not affected the plaintiffs in any othe way than by casting a cloud upon their titl the appropriate relief that the plaintiffs, i the circumstances, could claim as again the defendant, would be a declaration c their title and possession.--

**35 T. L. R.**, *22*

**22.** *Per Sesha Aiyar, J.*--If by an ac done by Government, with whom the Regu lation of the distribution of the water of a irrigation work rests, sensible injury is in flicted on a body of riparian owners by dim inishing the water supply which they hav hitherto utilised, the riparian owners in juriously affected have, under the commo law, a right of suit against Government and this right of suit is not lost by reaso of the provisions of the Irrigation Regula tion.

The one fundamental Rule of statutory construction--the Rule which at once de fines the office of the judiciary and mark

the limit of their legitimate authority—is that the Court should seek out and enforce the true purpose and intention of the Legislature. The first endeavour must, of course, be to ascertain this intention from the language employed in the Act; and if this language is plain and free from doubt or obscurity, it must be taken as meaning exactly what it says, whatever may be the consequences. This is the cardinal rule, and though the statement of it is simple, its application in particular cases has not infrequently been found to be attended with difficulty by the Courts. Nothing is more familiar in legal hermeneutics than the rule that a thing may be within the letter of the statute, and yet not within the statute, because not within its spirit nor within the intention of its makers. A slavish adherence to the letter of a statute is dangerous and is avoided by the Courts when such adherence leads to strange, unexpected, absurd, or mischievous consequences irreconcilable with the spirit and reasons of the enactment; and Courts have in such cases the power to declare that a case which falls within the letter of the statute is not governed by the statute. In other words, the intention of the Legislature, although it may not be consistent with the exact and literal import of the language employed, must be enforced by the Court.

The riparian rights of a ryot are as much property as is his land or building. The ryot cannot be divested of his right of using the water, which is a property right, except by a constitutional exercise of the power to appropriate private property for public use on making compensation. The construction of works may be necessary for the distribution of water for irrigation: but statutory powers authorising the construction are meant to be exercised so as to cause as little damage as possible to existing rights: and in any given case where injury has resulted, it would be for Government to show that they could not exercise their statutory powers without injuring the property rights of the plaintiff.

When a defendant contends that the plaintiff's right of action has been taken away by a statutory enactment, the burden is upon him to show that the Act beyond all doubt has taken away such right; and if that burden is not discharged, the plaintiff's right of action must be held to subsist. It is a well-recognised rule that statutes which encroach on the rights of the subject, whether as regards person or property, should be interpreted so as to respect such rights. There is the highest authority for the principle that a statute must not be deemed to take away or extinguish existing rights, unless it appears by express words or plain implication that it was the intention of the Legislature to do so: and when the intention is not unequivocally expressed and there is no provision for compensation in the statute or the statute is silent about compensation, an intention to take away property should not be imputed to a Legislature.— **11 T. L. J.,** *91.*

**23.** It is within the competence of Government to assess Cherikkal Jenmom lands in accordance with the Rules on the subject.

The action of Government in assessing the Jenmom Cherikkal lands for more than half the tax leviable on Sirkar Cherikkals was illegal. The jurisdiction of the Civil Court to remedy this illegality is not one ousted by Section 52 of the Revenue Recovery Regulation (F. B.).— **36 T. L. R.,** *174.*

**24.** Plaintiff filed his suit on 6-11-1094 for setting aside an order of the Division Peishkar convicting him under Section 6 of the Land Conservancy Regulation for unauthorised occupation of Poramboke and sentencing him to a fine of Rs. 5 and ordering his eviction therefrom. The order was finally confirmed by the Dewan in Thulam 1093. The suit was dismissed by the District judge as barred under Section 18 of the Land Conservancy Regulation. The contention having been raised that the order was *ultra vires*, as the land in question was not Government land but the plaintiff's own and that, therefore, Section 6 had no application;

*Held.*—Section 18 of the Land Conservancy Regulation runs thus:—'No suit against Government shall be entertained in any of Our Civil Courts in respect of any order under this Regulation, except upon the ground that the land in respect of which such order has been passed is not a land which is the property of Government, whether a Poramboke or not: Provided that Civil Courts shall not take cognisance of any such suit, unless it shall be instituted within one year from the date on which the cause of action arose". Thus an order passed under the Regulation could be impeached by suit only on two conditions being satisfied, namely, (1) that the ground of relief is that the land dealt with by the order is not Government land, and (2) that the suit is instituted within one year of the date of the order.

The setting aside of an order passed under the above Regulation, in the manner contemplated therein, should form the groundwork of such other relief or reliefs that may be granted by the Courts to private individuals, and therefore, if the prayer to set aside the order is barred, the foundation for the suit falls to the ground.

The suit having been brought more than one year after the order complained of, was not maintainable.

*Per Sesha Aiyar, J.*—In the construction of a statute, in order to determine the true intention of the Legislature, the whole and every part of the statute must be considered. This rule is of primary importance and has long been settled. A statute should be read with reference to its leading idea, and its general purpose and intention should be gathered from the whole Act, and this predominent purpose will prevail over the literal import of particular terms or classes, if plainly apparent, operating as a limitation upon some and as a reason for expanding the signification of others, so that the interpretation may accord with the spirit of the entire Act, and so that the policy and object of the statute as a whole may be mad fectual and operative to the widest po extent.

*Per Viraraghava Iyengar, C. J.*- proceedings taken by the Division Pei are judicial in their nature and the o passed by him under Section 10 ma right or may be wrong, and if wrong o happen to be passed by this public func ary in the exercise of statutory powers ed in him, parties affected prejudicial those orders are bound to seek for rel the manner provided by the statute (F.

**38 T. L. R.,** *94* **(=12 T. L. J.,**

**25.** *Per Chatfield, J.*—Following son, J. in 29 Mad. 461 at p. 470.—" It i open to the Civil Courts to discuss the ciency or otherwise of the grounds on w the Darkhast authorities, whether ori or appellate, grant or refuse to grant vernment lands to parties applyin them, so long as these authorities act in the scope of the authority conferre them by the rules."

Though the successful applicant run risk of the decision in his favour being on appeal, yet in order to divest him vested right,the proceedings in appeal conform strictly to the provisions of 36 of the Puduval Rules.

In this case, the appeal having not filed within 2 months of the decision o Tahsildar and the appellate order h contained no reference to the appeal preferred after the time and not h therefore excused such delay, the Pei (the appellate authority) must be hel have had no jurisdiction to entertain appeal and his order, passed without j diction, is a nullity.

*Per Raman Tampi, J.*—Following observations of Sir Arnold White, C. 29 Mad. 461 at p. 464—" It does not f that, because it is not open to a Civil C to cancel a Pattah because some of the malities of the rules have not been ob ed, it is not open to a Civil Court to aside the order of an appellate Rev

Tribunal which allows an appeal against a grant by a Revenue Officer on the ground of irregularity of procedure, if the Court is of opinion that there is no evidence of irregularity; it also does not follow that, because it would not have been open to a Civil Court to interfere if the Tahsildar had declined to make the grant on the ground of irregularity of procedure, it is not open to a Civil Court to interfere when a grant is set aside by the appellate authority on the ground of irregularity of procedure if the Court is of opinion that there is no irregularity. If no grant has been made, there is no contract. If a grant has been made, there is a conditional contract."

In the absence of precise provisions in the Puduval Rules, the only grounds, which would justify interference with the Tahsildar's order, are those of fraud, misrepresentation or mutual mistake as to an essential matter or non-compliance with the specific rules on the topic.

That this was the intention of the Government is clear from the deliberate omission on the part of Government to define and regulate the scope and extent of the Peishkar's powers in the Puduval Rules.

If Government should be held to have intended to invest Peishkars with autocratic powers, the very object of the rules would be defeated thereby and insecurity of tenure would result therefrom. The person who is entitled to the appeal must be a party who has an undoubted *locus standi* in the inquiry which culminated in the order objected to.

The delay in the presentation of the appeal cannot be excused, unless, having regard to all the circumstances, the appellant has been vigilant.

The above views do not conflict with the rights and interests of either Government or the law abiding citizen. They are based on considerations of justice, equity and good conscience which ought to be the guides in the absence of specific rules of customary or statute law.—**14 T. L. J.**, *106.*

Ref.—42 T. L. R., 83
(=15 T. L. J., 30).
Fol.—16 T. L. J., 547.

**26.** *Per Chatfield, J.*—Section 7 of the C. P. C. relates only to cases where a cause of action has arisen and it then determines where such cause shall be tried.

Where the question is whether words uttered or written by a Judicial Officer can give rise to a cause of action, Section 7 C. P. C. has no application.— **14 T. L. J.**, *168.*

**27.** Civil Courts have a right to ascertain whether a certain action taken by the spiritual head of a church was taken *bona fide* or not, if that action affected the civil rights of a person, such as, his rights to an office or rights to property or some other right. Civil courts will not interfere when a spiritual right alone is affected. "If the result of an excommunication is to deprive a man of his civil rights, a Civil Court has jurisdiction to entertain a suit brought to set aside such excommunication as illegal and to inquire into the merits of the case. But even here the jurisdiction is limited. All that the Court can inquire into is whether the order of excommunication was passed *bona fide* in accordance with natural justice, *i. e.*, after a due hearing given to the party excommunicated, at a regularly convened meeting of the caste which passed the order, or by a person duly authorised by the caste to pass it, in accordance with either caste usage or rule, and for an offence against that usage or rule which the man excommunicated did, as a matter of fact, commit...... If these conditions are fulfilled, the Court must hold that the caste acted within its powers as a domestic tribunal with whose discretion it will not interfere—the Court in that case having jurisdiction to inquire from the point of view of the caste, not of the Court, into the reasonableness or justifiable character of the rule for a breach of which the order of excommunication was passed."

The Jacobite Syrian Church is a voluntary society who possesses a body of rules and a tribunal of their own for the purpose of regulating their internal concerns and enforcing discipline among their body.

"Where any religious or other lawful association has not only agreed on the terms of its union, but has also constituted a tribunal to determine whether the rules of the association have been violated or not and what shall be the consequence of such violation, the decision of such tribunal will be binding, when it has acted within the scope of its authority, has observed such forms as the rules require if any forms be prescribed, and if not, has proceeded in a manner consonant with the principles of natural justice....In such cases, the tribunals so constituted are not in any sense, Courts; they derive no authority from the Crown; they have no power of their own to enforce their sentence; they must apply for that purpose to the Courts established by law; and such Courts will give effect to their decisions as they give effect to the decisions of arbitrators whose jurisdiction rests entirely upon the agreement of parties" (F. B.).— **41 T. L. R.,** *1.*

**28.** A grant of Puduval land made by the Thasildar cannot be questioned in a Civil Court. Similarly, when the registry was refused by the Tahsildar and on appeal the superior Officer ordered the registry, the Civil Court has no jurisdiction to question it.

If the superior authority cancels the registry and the matter is made the subject of a suit in a Civil Court, the latter has jurisdiction to enquire whether the superior authority acted within the scope of his authority granted to him by the Rules, *i. e.,* (1) whether there was a proper appeal by a party entitled to file the appeal, (2) whether the appeal was in time, and, if not, whether the delay was excused as provided in the Rules, and (3) whether the grant was cancelled by the superior authority on any of the grounds open to him.

If the superior authority acted or pu ed to act on any of the grounds open to the Civil Court should accept his de and the Court is not entitled to examir correctness of the finding.

*Per Sankara Pillai, J.*—The D Peishkar exercising appellate jurisdi in respect of orders passed by the Tah in respect of Puduval registries repre the Government as fully as the Tah himself, and his jurisdiction is co-exte with that of the Tahsildar.

The Civil Courts have jurisdiction on enquire whether the appellate auth has acted within the scope of its pov (F. B.)— **42 T. L. R.,** *83* **(=15 T. L. J.,** ...

Fol.—16 T. L. J., 547.

**29.** Where the notice under Secti of the Land Acquisition Regulation, w is the essential pre-requisite to jurisdic has either not been served on pe known or believed to be interested in land acquired or is so defective th curtails the period of time which unde law should elapse between the public thereof and the date fixed for the app ance of the persons affected, the subseq proceedings including the award are v able at the option of such persons. In s cases, the jurisdiction of the Civil Cour not ousted by the proceedings under Land Acquisition Regulation, where aggrieved party seeks to recover dam for the injury sustained.—

**42 T. L. R.,** *318* **(=16 T. L. J.,** ...

**30.** A suit for declaration that plai has been duly elected as President Municipality is of a civil nature (F. B.)-

**17 T. L. J.,**

**31.** See also—

Sec. 20.— **18 T. L. J.,** *1*

" 65.— **18 T. L. J.,** *1*

8. No Civil Court shall take cognizance of any suit relating to pensions, to Kandukrishi, Viruthi, or Service Inam lands, or to any benefits arising out of such lands, unless the plaint is accompanied by an order of Our Government permitting the plaintiff to seek redress in Civil Courts.

Suits relating to pensions, Kandukrishi, Viruthi or Service Inam lands.

*Explanation.*—Lands granted as a reward for past services are not within the meaning of this Section.

*Exception.*—The provisions of this Section shall not apply to suits where the registry-holder of a *Kandukrishi Pattam* land recognised as such in the Government revenue accounts seeks—

(i) to recover the land from a mortgagee or a lessee, or

(ii) to evict a trespasser therefrom.

---

**Sec. 8** [ = S. 7-A = ,, ]

I. Section 1 of Regulation II of 1037 enacted that "the Civil Courts shall take cognizance of all suits of a civil nature, with the exception of suits of which their cognizance is barred by the laws and customs of Travancore." Civil Courts had no jurisdiction over Kandukrishi lands. With the enactment of Regulation II of 1065, Section 7 thereof authorised the Courts to try all suits of a civil nature unless their cognizance was barred by some enactment. In the absence of any enactment against the jurisdiction of Civil Courts over Kandukrishi lands and in view of the omission of the word 'custom' in the above Section 7, it was held, in 9 T. L. R., 142, that, under Section 7 of the new Code (Regulation II of 1065), Civil Courts had jurisdiction to try suits relating to Kandukrishi lands (26-11-1067). In 9 T. L. R., 169, it was held by a Full Bench that, under the Royal Proclamation, dated 4th Edavom 1061, the Civil Courts had no jurisdiction to try suits relating to Viruthi lands, whether alienated or unalienated or even trespassed upon (26-11-1067). Para 8 of the Proclamation laid down that "no action shall lie respecting any such land." "Such" land was interpreted to mean all Viruthi lands whether alienated or not. It was observed in that case that "the scope and object of the Royal Proclamation, the special character of Viruthi tenure and the unlimited power of disposal the Government has over property of this description, point to the conclusion that the Legislature intended to divest the Civil Courts of jurisdiction over suits relating to Viruthi lands." In agreeing to the dismissal of the suit, T. Kunhiraman Nair, J. observed:—"The effect of the law as now interpreted by the Full Bench, is to deprive a large class of petty and poor landholders in the State of the protection afforded by the Civil Courts established in the country for settlement of disputes of a civil nature, while the declared general policy of Government has always been to make the possession of landed and other property as secure as possible. It is, I think, a matter for the serious consideration of Government and the Legislature, whether the existing law should not, in the interests of justice, be so amended as to enable the Viruthi holders to have recourse to the regularly constituted tribunals of the State for enforcing their rights as against private individuals, in connection with their Viruthi holdings, the prohibition enacted

in the last Clause of **Para** 8 of the Royal Proclamation of 12th Kanni 1068 being restricted to suits against Government for anything done under its orders."

In 10 T. L. R., 60, it was held that the Full Bench ruling in 9 T. L. R., 169 applied only to such Viruthi lands as had been granted and settled under Para 6 of the Proclamation of 1061, and not to those remaining unsettled (2-4-1068).

In 12 T. L. R., 190, plaintiff sought the reversal of the decree of the lower Court which disallowed his claim to sell Viruthi lands in satisfaction of a hypothecation debt due to him from 1st defendant. It was contended for the appellant that the Viruthi lands not settled under the terms of the Proclamation on the subject being under the jurisdiction of the ordinary Civil Courts, they might properly be the subject of a private or public sale as any other species of lands. It was held that the question of jurisdiction over, and the question of alienability of, Viruthi or Inam lands had to be decided on different principles, and that such lands being held by the defendant on the condition of his rendering certain services to Government had been treated by immemorial usage as inalienable. (25-12-1070).

**II.** On 22-10-1070, the amending Regulation II of 1070 was passed. That Regulation added Section 7-A to Regulation II of 1065. The addition was thus explained in the Statement of Objects and Reasons :—

"Section 2 of the Bill prohibits the Civil Courts from taking cognizance of suits relating to pensions, Kandukrishi, Viruthy and Service Inam lands, without the special order of Government. Before the present Code of Civil Procedure came into force, suits relating to Kandukrishi lands were not cognizable by the Courts. (A. S. Nos. 92 of 1043, 262 of 1044 and 148 of 1057.) Viruthy lands are a species of Service Inams. In British India, claims to Service Inams are exclusively adjudicated by the Revenue authorities (Madras Regulation VI o[f] Suits relating to hereditary pensio[n] not entertained by Civil Courts in [B] India, except under the sanction of G[overn]ment (Section 6 of Act No. 23 of 1871 [... con]sidering the peculiar nature of the v[arious] kinds of property referred to in this S[ection] and the absolute power of disposal the Government has, *in theory*, over it is expedient that suits relating to should be treated differently from suits. There may be cases in wh[ich] rights of the Government are involve[d ...] the dispute is confined to the rival cla[ims of] private individuals. In such a cas[e] Government may permit the par[ties to] establish their rights in Civil Courts the ordinary procedure. The absolu[te pro]hibition will throw upon the Gover[nment] the duty of adjudicating upon a ver[y] number of petty claims. The satisf[actory] discharge of this duty would be imp[ossible] in the ever-increasing work of the g[eneral] administration".

In regard to the Explanation, i[t was] observed by the Select Committee c[n the] amending Bill that "lands granted f[or] services could not be treated as S[ervice] Inam lands as the holder is not bo[und to] render service".

"The object of the Section evide[ntly is] that, as lands such as Kandukrish[i and] Viruthi are at the absolute disposal [of Go]verument, whenever any change in t[he dis]position, or even possession, of such l[ands is] sought for, it is the Government, w[hich is] fully competent to effect it at thei[r will], that should be applied to, and not th[e] Courts, except when Government c[hooses] to leave it to the latter, in the circums[tances] of particular cases, to grant redress.

" The words "relating to" in Secti[on ...] do not lend themselves to the constr[uction] that it is only where the lands them[selves] are sought to be affected by the decre[e that] Government sanction for the suit is ne[cessary]

**28 T. L. R., 2**
**( = 3 T. L. J**

In adding Section 7-A, the Government only adhered to their old policy. The severity of the law pointed out in 9 T. L. R., 169 continued.

III. The Section (7-A) as thus enacted was adopted in the original Bill which became the present Regulation (VIII of 1100). To this, the Select Committee added the Exception. The Committee said:– "The provision requiring sanction for all suits relating to *Kandukrishi* lands causes considerable delay and hardship to the registry holders of *Kandukrishi* pattom lands. With a view to minimise such delay and hardship, the Government have by their Rules, published at page 326 of Vol. II of the First Supplement to the Land Revenue Manual, provided that sanction may ordinarily be accorded to certain cases. This executive order may now be given legislative sanction".

IV. When the Bill, as amended by the Select Committee was considered by the Council, a motion was made by a Non-official Member to delete the Section, on the ground that no such restriction should be maintained. The Member in charge, in opposing the motion (which after discussion was lost) spoke as follows:— "* * Elsewhere, pensions are regulated by Pensions Act and the question of pension is entirely a matter between Government and the pensioner, and therefore it is that Government sanction is insisted upon in suits relating to pensions. So far as Servide Inam lands are concerned, I daresay that it will be readily conceded that sanction is necessary. The only question is about Kandukrishi lands. I daresay that the House knows that these lands are supposed to be the home-farm lands of the Sovereign, and so, they are at his entire disposal. When the Select Committee were at the Section, certain inconveniences and difficulties were brought pointedly to their notice. Therefore, to remedy those inconveniences and in accordance with the Rules that have been promulgated by Government themselves, the Select Committee thought it necessary to give exemption in certain cases, namely, in cases where the suit is for the recovery of the lands from mortgagee or lessee or for evicting a trespasser therefrom. In those cases, anybody is at liberty to sue without sanction. Even in the case of suits for the recovery of service lands from a mortgagee or lessee or for the eviction of a trespasser, this may be done, so that in respect of Service Inam lands in which the interests of Government will not be affected, suits are allowed to be filed without sanction. I think these are the ordinary cases in which the holders of Kandukrishi lands will be affected and for which Government sanction has hitherto been required. I think the exemption proposed by the Select Committee is quite ample; and I do not think it desirable to extend it further, for this reason also, that, if you extend it to Kandukrishi lands, it is open to defendant to say that the Sirkar is interested in the property and that it should be impleaded as a party and that the suit should be filed in the District Court and thus have it protracted. The provision, as it is, is to my mind also a safeguard, because so far as the ordinary Kandukrishi tenant is concerned, recovery from a mortgagee or a lessee or evicting a trespasser, these are ordinary cases in which the holder of Kandukrishi lands will have to file a suit.

"* * Government are not bound to recognise the partition unless it is declared by a Proclamation that these holders have got a permanent right of occupancy alienable, heritable and all that; consistent with that principle, it should not be allowed that a proprietor or a land-holder should be compelled to recognise the various sub-divisions of his estate. That being the case, in the case of partition, if Government should recognise the divisions of holdings, I say Government sanction would be required. Ordinary cases are met by the provision that has already been made. * *.

"Till now, there is no permanent right of occupancy. The relation is only that of an

ordinary landlord and tenant. An ordinary landlord is not bound to recognise sub-divisions made by his tenants without his consent, if the tenant has not got heritable and alienable right as in the case of ryotwari holdings. So long as the lands are Government lands—Government may not evict—just as in the case of Jenmies and Edavakais, but the right to evict is there. When there is no permanent heritable or alienable right, I do not think it desirable. * *

" Every partition will have to be recognised and also sub-division. The apportionment of assessment will have to be made and other things contingent thereon. So long as the tenant has no permanent right of occupancy, the Government are not bound to recognise partition. That is why Government sanction is necessary. The point is that, if once a party gets Government sanction, he has got the assurance that Government will act according to the decision of the Court. If without sanction the man gets a partition decree by going to a District Court or High Court and ultimately Government refuse to recognise the partition, it will be absolutely of no use. Therefore, in order not to launch upon speculative transaction and ultimately to be told that Government would not recognise it, sanction should be obtained. If sanction is obtained, there will be a guarantee that Government will abide by the decision of the Court, and it is a safeguard. To my mind, the sanction is absolutely desirable and it is not prejudicial to the tenants and the extent to which we have gone is sufficient to satisfy all ordinary requirements. I should say that the amendment made by the Select Committee is in the interests of the tenant and will also safeguard the interests of the Government. * *."—

*L. C. P., dated 18-2-1925.*

V. The Rules referred to by the Select Committee with reference to the Exception added by them are contained in the Proceedings of Government, No. 2790/L. R. 2066 of 1914, dated 29th May 1918/16th Edavom 1093. At the 14th Session of the Popular Assembly the Member for Neyyattinkara Taluk urged the abrog[...] of the Rule regarding the sanction o[...] vernment for filing Civil suits in respe[...] Kandukrishi lands. In regard to this p[...] and another, the above Proceedings o[...] Government were issued. The G. O. w[...] follows :—

"In regard to the first point, the [...] referred to by the Member is Section 7- the Civil Procedure Code. Under Section, no Civil Court could take c[...] zance of any suit relating to the Kanduk[...] lands or to any benefit arising out of [...] lands without the previous sanction of [...]vernment. Government consider that provision of law is very necessary in interests of the Kandukrishi lands and [...] not be abrogated.

" 2. With regard, however, to the po[...] of granting permission to file suits in res[...] of Kandukrishi lands under the above [...]vision of law, Government feel that standing orders on the subject are not c[...] vague and indefinite but tend to cause [...] hardship in individual cases. Governm[...] therefore, resolve to issue the follow[...] revised instructions in regard to the gr[...] of permission to institute civil suits in [...]pect of Kandukrishi *Pattom* lands or benefits arising out of such lands :—

(1) The Rule directing the transfer Revenue registry of alienated Kandukri[...] lands in favour of alienees is cancelled [...]cept in those cases where the alienor's ri[...] to redeem the lands has been barred limitation ;

(2) when the registry-holder or Pat[...]dar of a Kandukrishi land seeks to rede[...] it from the person to whom it might h[...] been alienated for consideration, perm[...]sion to sue will be given ;

(3) the registry-holder or Pattadar c[...] Kandukrishi land will be permitted to [...] for the eviction of a trespasser from [...] land provided the former undertakes to c[...]serve the rights of Government over [...] land trespassed upon ;

(4) permission to sue will, as at present, be given to the registry-holder or Pattadar of a Kandukrishi land to redeem it from a lessee :

(5) the permission contemplated above will, of course, be given without prejudice to the interests of Government over the land, which are paramount ;

(6) when a mortgagee or other alienee of a Kandukrishi land seeks to sue for the recovery of the amount due, without proceeding against the property, no sanction is necessary.

"2. The instructions contained in the preceding paragraph will not apply to Kandukrishi *Thanathu* lands. These stand on a different footing and no permission to file suits in respect of them will be given under any circumstances".

VI. In Section 8, the rigour of the Rule contained in the old Section 7-A had been relaxed and an exception made in the case of suits by registry-holders of Kandukrishi Pattom lands recognised as such in the Government Revenue accounts for the recovery of such lands from a mortgagee or a lessee or for the eviction of a trespasser. * * The policy adopted in such matters seems to be towards recognising alienations by way of mortgages and leases with regard to Kandukrishi Pattom lands.—

**43 T. L. R.,** *466*
**( = 17 T. L. J.,** *879*).

**Case Law.**

**1.** In computing the period of limitation for suits relating to benefits arising out of Kandukrishi lands, the time taken to obtain the sanction of Government required under Section 7-A of the C. P. C., shall not be excluded.

Neither the Civil Procedure Code nor the Limitation Regulation makes any allowance in respect to the time taken to obtain the sanction of Government. There being no saving Clause in Section 7-A in respect to claims that had accrued before it was passed by the Legislature, plaintiff's claim to recover from his tenant the rent due for 1068, in respect of a Kandukrishi land which he held under the Sirkar, should have been brought into Court within three years. The suit was filed in 1072 ; and it was rightly dismissed.— **15 T. L. R.,** *8.*

Ref.—28 T. L. R., 250
(=3 T. L. J., 209).
K. P., 287.
19 T. L. J., 782.
Fol.—K. P., 270.

**2.** A suit for recovery of damages on account of the non-performance of the Ooliam services attached to a Viruthi land is not a suit for the recovery of the land or any interest in it and, therefore, no Government sanction is necessary to institute the same.
**15 T. L. R ,** *40.*

**3.** There are two sorts of Kudumba Poruthi grants—(1) granted in consideration of past services or meritorious conduct and (2) granted in consideration of future services agreed to be rendered. The first kind of grant is not resumable or recoverable by the grantor ; while the second, intended simply as wages for future services, may be resumed under certain circumstances and is intended by the Legislature to be brought within the purview of Section 7-A, C. P. C., as would be clear from the Explanation attached thereto.— **16 T. L. R.,** *31.*

Ref.—2 T. L. J., 391.

**4.** According to Section 7-A, the Civil Courts have no power to take cognizance of suits affecting Kandukrishi lands without permission of the Government and that permission must be filed with the plaint. Assuming that the plaint property is Kandukrishi land, it does not lie in the judgment-debtor's mouth to set up the plea at this stage (after the decree) for the purpose of setting aside the sale. He had not appealed against the decree nor had he raised this contention at the date of sale, nor did it appear in his written statement. Whether the land is Kandukrishi or not is a matter of evidence, and is a fact that should have

been established before the passing of the decree.

*Per Chief Justice.*—If the lands are really crown lands, the proceedings taken will not bind the Crown, though, as between the parties to the decree, the decree must be enforced.— **18 T. L. R.**, *157.*

**5.** The statutory prohibition against alienation of Viruthi land will not affect the operation of the ordinary law of procedure. **20 T. L. R.**, *218.*

**6.** A suit for recovery of arrears of Thiruppuvarom was dismissed on the ground that the Thiruppuvarom in the case was charged on Viruthi land and that a benefit arising out of such land could not be made the subject of a civil suit without Government sanction under Section 7-A of the Civil Procedure Code.

*Held.*—Thiruppuvarom being a payment recognised by the Sirkar the person entitled to receive the payment could sue in a Civil Court to recover it as rent from the holder of the land without previous sanction of Government.

It is only in the following two classes of cases that such sanction is necessary:—

(*a*) Where Government is to be charged with any liability to pay any grant or land revenue.

(*b*) In cases of Service Inams, Kandukrishi and Viruthi lands where the lands themselves are sought to be made liable or alienated by a decree of Court.—

**22 T. L. R.**, *1.*

Ref. —28 T. L. R., 250
(=3 T. L. J., 209).
19 T. L. J., 782.

**7.** Where the Service Inam lands are burdened with future service, a suit for rent without the sancti n of Government is prohibited by Section 7 ., C. P. C.—

**K. P.**, *270.*

**8.** Where two disti pieces of land were leased at the same ie, the first suit was brought to recover only one piece of land and the second suit in respect of the second piece after obtaining the sanction of Government as it was Kandukrishi land. The Munsiff dismissed the second suit holding that the claim therein made arose from the same cause of action as in the prior suit and that as the 1st suit related to only one piece, the plaintiff must be taken to have relinquished the other under Section 39 [=Or. II, R. 2] of the Civil Procedure Code.

*Held* (confirming the decision of the lower Appellate Court).—As the plaintiff could not have included the latter piece in the first suit for want of sanction of Government, the right to sue did not arise at the same time in both though the causes of action arose at the same time.

As the claim for the second suit could not have been made at the date of the first suit, it could not be taken to have been relinquished.

*Per C. Vencobachariar, C. J.*—As two distinct pieces of property were leased, though at one and the same time, the plaintiff had a separate cause of action for each property both of which he was not bound to join together in one suit.— **K. P.**, *287.*

**9.** Sri Pandaravagai Anubhogam property comes under the class of Service Inam lands referred to in Section 7-A of the Civil Procedure Code; and in a suit relating thereto, the plaint must be accompanied by an order of the Government permitting the plaintiff to seek redress in Civil Courts.—

**2 S. D.**, *61*

**10.** A suit in respect of Kandukrish lands could be instituted under Section 7- of the Civil Procedure Code only with th special sanction of the Government. sanction accorded by Government is vali and gives jurisdiction to the Court, unle such sanction was obtained through mi representation or fraud (F. B.).—

**26 T. L. R.**, *184*
**( = 1 T. L. J.**, *35*

Ref.—28 T. L. R., 250
( = 3 T. L. J., 2(

**11.** It is only when a grant is made

consideration of future services that Section 7-A of the Civil Procedure Code applies, and the jurisdiction of the Civil Courts is ousted.— **2 T. L. J.,** *391.*

**12.** A suit for redemption of a mortgage of Kandukrishi lands is not cognisable by a Civil Court, unless the plaint is accompanied by an order of Government permitting the plaintiff to seek redress in Civil Courts as required by Section 7-A of the Code of Civil Procedure.—**28 T. L. R.,** *250*
(= **3 T. L. J.,** *209*).

[The addition of the present Exception to the old Section 7-A has changed the law and mitigated the severity noted in 9 T. L. R., 169.]

Ref.—19 T. L. J., 782.

**13.** A suit for declaration of title to a building standing on Kandukishi land and put up by one or the other of the parties to the suit is maintainable even without Government sanction under Section 7-A, Civil Procedure Code, as the suit relates to the building only and does not in any way affect the land.— **30 T. L. R.,** *213.*

Ref.—33 T. L. R., 240
(=7 T. L. J., 280).
19 T. L. J., 782.

**14.** (1) The rights of a tenant of Kandukrishi lands over the improvements effected by him on such land, that is, plantations effected and buildings erected by him on such land are attachable and saleable in execution of a decree against such tenant and Section 7-A of the Civil Procedure Code is no bar to such attachment and sale.

The improvements effected on such lands by Kandukrishi tenants, many of whom have been, according to the traditional policy of the Crown of not capriciously disturbing possession, left to enjoy Kandukrishi lands for generations, are often of a substantial kind, and there is no reason why such valuable rights should not be made available by attachment and sale, for satisfying decree-debts, due by those tenants, unless there is some express provision of law to the contrary.

(2) Section 7-A, Civil Procedure Code, applies only to suits, as understood in the grammatical sense, and its provisions should not be applied to execution proceedings.

The use of the word 'plaint' in Section 7-A and the language of Section 44 [new Section 24 and Order IV, Rule I] which says that 'every suit shall be instituted by presenting a plaint to the Court or such Officer as it appoints in this behalf' appear clearly to show that the word 'suit' was used in its ordinary sense, *i. e.*, as a proceeding beginning with the presentation of a plaint and ending with the passing of a decree. If the Legislature had thought that Section 7-A should govern execution proceedings also, they would have used language more clearly expressing that intention. (F. B.).— **33 T. L. R.,** *240*
(= **7 T. L. J.,** *280*).

Ref.—19 T. L. J., 782.

**15.** The plaintiff's case was that the plaint properties, though originally Kandukrishi tenure, were under a Royal grant made over absolutely to one S. and others, that plaintiff purchased their rights under a registered sale-deed, that plaintiff and her predecessors in title were in possession for over sixty years adversely to the Sirkar, that she was forcibly evicted therefrom under the orders of the defendant Sirkar, and that she was entitled to restitution of the property or in the alternative to the value of improvements. The Sirkar contended that the Court was not competent to take cognisance of the suit, since the properties were Kandukrishi lands and the plaintiff had not produced any sanction from Government permitting her to seek redress in Civil Courts.

*Held.*—In view of the plaint allegation that the suit properties passed under a Royal grant with absolute power of enjoyment and that the plaintiff and his predecessors were in adverse possession for over sixty years, sanction under Section 7-A was not necessary (F. B.).— **10 T. L. J.,** *60.*

9. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in Travancore having jurisdiction to grant the relief claimed.

Stay of suit.

*Explanation.*—The pendency of a suit in a foreign Court does not preclude the Courts in Travancore from trying a suit founded on the same cause of action.

---

16. A sanction, which in terms is one granted to a party personally, may in substance be one intended for and on behalf of others also, if in fact the sanction was obtained by such person in a representative capacity, in which case not only the person who obtains the sanction but others for whose benefit it is obtained may institute or prosecute a suit.— **11 T. L. J.**, *285.*

17. No sanction of Government under Section 8 is necessary to institute a suit by the registry-holder of a Kandukrishi land for recovery of the rent due in respect of the property from the lessee.

The benefit mentioned in Section 8 must be such an interest as would affect the land itself, if a Civil Court grants the relief prayed for in the plaint. Rent in respect of Kandukrishi lands cannot be called a benefit arising out of the land. The Government are not concerned with the rent due to their tenant from his lessee. Their interest is confined to the land. Rent pure and simple is a question exclusively between lessor and lessee. It does not affect the land.— **19 T. L. J.**, *782.*

18. See also—

Sec. 52.— **7 T. L. J.**, *24.*
**43 T. L. R.**, *466*
(=**17 T. L. J.**, *879*).
**19 T. L. J.**, *113.*

Order XXIII, r. 1.— **24 T. L. R.**, *137.*
„ XXXVIII, rr. 1-3.—**42 T. L. R.**, *453*
(=**16 T. L. J.**, *595*).

---

**Sec. 9** [= S. 8 = *S. 10*]

I. 1. The corresponding Section in Regulation II of 1065 was as follows :—

"8. *Pending suits.*—Except where a suit has been stayed under Section 17, the Court shall not try any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit for the same relief between the same parties, or between parties under whom they or any of them claim, pending in the same or any other Court, whether superior or inferior, in Travancore, having jurisdiction to grant such relief.

*Explanation.*—The pendency of a suit in a foreign Court does not preclude the Courts in Travancore from trying a suit founded on the same cause of action."

2. For Section 17 of the old Regulation, see under Section 22, *Infra*.

II. 1. The words "proceed with the trial" have been substituted for the word "try" in order "to express clearly the action to be taken by the Courts." (Select Committee on the 1901 Bill).—
*India Gazette dated 21-3-1903, Pt. V.*

2. The words "for the same relief" which occurred after the words "in a previously instituted suit" have been omitted "because the application of the provision should depend not upon the mere prayer of the parties, but upon the matter in issue."— ***Ibid.***

It has been held, however, that the omission does not alter the law as it stood under the old Section.

III. Section 8 (old) comes into operation only where the matter directly and substantially in issue as well as the relief asked for are identical in the two suits and they are between the same parties or their privies (17 T. L. J., 642).

**Case Law.**

1. The Sirkar started proceedings under the Land Conservancy Regulation against the plaintiffs alleging that the plaint property was Sirkar Poramboke. Plaintiff accordingly filed a suit for declaration of title to and possession of the property on the ground that it formed part of his registered holding. Even after the filing of the suit, the Sirkar went on with the proceedings, and it was decided that the land was Poramboke, and a fine and prohibitory assessment were levied from the plaintiffs. The plaintiffs then filed another suit to recover as damages from the Sirkar the amounts so levied. Both the suits were tried together and dismissed by the District Judge. The plaintiffs appealed. It was contended for the defence that the proceedings under the Land Conservancy Regulation constituted a suit in which the matter in issue was substantially the same as in the suit, and that the suit for declaration of title was not maintainable as Section 8 of the Civil Procedure Code barred the trial of the suit.

*Held.*—Proceedings under the Land Conservancy Regulation are not suits within the meaning of Section 8 of the Civil Procedure Code.

The term 'suit' is not defined in the Civil Procedure Code or the General Clauses Regulation. But it has been held that the term ought to be confined to such proceedings as under that description are directly dealt with by the Code of Civil Procedure or such as by the operation of the particular Acts which regulate them are treated as suits (22 Cal., 943).

The order under the Land Conservancy Regulation passed after the suit was filed could not operate as a bar to the suit for declaration of plaintiff's title.—

**16 T. L. J.,** *86.*

2. If a defendant to a suit wishes to show that the trial of the suit is barred by Section 8 (old Code), it is his business to produce before the Court such documents as will satisfy the Court that the Section is applicable (39 I. C., 906). Where he does not do so, he cannot be heard upon the contention.

**17 T. L. J.,** *642.*

3. Both under the old and the new Civil Procedure Code, the trial of a suit in which a matter directly and substantially in issue is similarly in controversy in a previously instituted suit between the same parties litigating under the same title, cannot be proceeded with if such suit had been pending in a Court of competent jurisdiction in Travancore. The wording of Section 9 shows that the suspension of proceedings in the latter suit is imperative. A decision of the suit in derogation of this imperative provision would clearly be an illegality, and a plea of *res judicata* based on such decision cannot be countenanced. Inasmuch as the jurisdiction and competency of the Court to decide the second suit is one of the essential conditions for its sufficiency to operate as a bar, the Court before which such a plea is raised has to examine its validity on that basis and to refuse to accept the plea if the decision in the second suit is tainted with an illegality as being in contravention of an express and imperative provision in the statute.

In cases of this kind, the trial Court should have consolidated the two suits by virtue of its inherent powers (F. B.).—

**19 T. L. J.,** *241.*

4. In proper cases, to avoid injustice, even if it arises only from unnecessary hardship being caused to parties in conducting the cases, a Civil Court has inherent jurisdiction to order a suit pending before it to be stayed pending the disposal of a criminal

*Res Judicata.*

**10.** No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

*Explanation I.*—The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

*Explanation II.*—For the purposes of this Section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

---

case arising out of the same facts. Great care must be taken that without very good reasons an action should not be held up for the disposal of another, the decision of which can have no legal effect on it.

Section 9, C. P. C., or the principle underlying it is applicable only to cases where there exists the essential element of jurisdiction in both Courts to deal with the matter in controversy and to decide it finally, so that the decision when actually made by one Court will be binding on the other. This principle is not applicable where the actions are before two Courts of absolutely independent jurisdiction, the evidence and decision in one Court upon any matter common to both the actions being quite useless for its determination in the other Court.

Where a civil suit will involve the cross-examination of the defendant—the accused in the criminal case—which will embarrass the accused in making his statement before the Criminal Court, in answer to the prosecution, the Civil Court will be doing justice if it stays trial of the suit before it.—

**19 T. L. J.,** *632.*

**5.** See also—

Or. III, r. 2.—**18 T. L. R.,** *65.*

Sec. 10 [ = S. 9 = *S. 11* ]

I. The changes made in the Section are:—

(1) The words "of jurisdiction" which occurred before the words "competent to try" in the main para of the old Section, have been omitted.

(2) Explanations I and II are new and "are the result of judicial decisions of this State in conformity with the Judicial decisions in British India. See 1 T. L. J., 49; 25 T. L. R., 77."— *Notes on Clauses.*

(3) Explanations III, IV and V reproduce the old Explanations I, II and III respectively.

(4) Explanation VI is the old Explanation V with the words "of a public right or" added after the words "in respect."

II. The Section as thus enacted is the same as Section 11 of the Indian Code. The Report of the Indian Special Committee says in the Notes on Clauses:—

"It is not possible to make a complete exposition of a subject so complex as that of *res judicata* within the limits of a Section of an Act and the Committee think it better to re-enact Section 13 as it stands in the Code

*Explanation III.*—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

*Explanation IV.*—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

*Explanation V.*—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this Section, be deemed to have been refused.

*Explanation VI.*—Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this Section, be deemed to claim under the persons so litigating.

---

with such modifications only as experience has shown to be necessary.

"The Committee recognise that a proceeding does not come within the language of that Section; but they think it better not to deal with this point in express terms for the reason that the applicability of the doctrine of *res judicata* to certain proceedings is not open to doubt; and they foresee that any express reference to proceedings in a crystallised definition might only lead to difficulties (L.R., 11: I A; 37, and I.L.R., 29 Cal., 70).

"*Explanation II* is new and is intended to affirm the view that the competence of the jurisdiction of a Court does not depend on the right of appeal from its decision.

"*Explanation VI.*—The inclusion of *public rights* is to give due effect to suits relating to public nuisances (Clause 91)." [Section 71 of the Regulation.]

III. The following Explanations (IV and VI) which were in Regulation II of 1065 have been omitted:—

"*Explanation IV.*—A decision is final within the meaning of this Section when it is such as the Court making it could not alter (except on review) on the application of either party or reconsider of its own motion. A decision liable to appeal may be final within the meaning of this Section until the appeal is made."

The latter portion of the above Explanation (2nd sentence) was in the Indian Civil Procedure Code Bill of 1907. The Select Committee of 1908 in omitting it said:—"We think it is liable to misconstruction and that the law is well established apart from the Explanation."

*Explanation VI.*—See Note under Section 18 *Infra.*

IV. Section 2 of Regulation II of 1087 was as follows:—"2. The Civil Courts shall not take cognizance of any suit brought on a cause of action which shall have been heard and determined by a Court of competent jurisdiction in a former suit between the same parties or between parties under whom they claim."

V. 1. The expression "cause of action" has been omitted by substituting in its

place the expression "matter directly and substantially in issue," an expression which will include not only the cause of action on which the suit is based, but also all matters which are or ought to be put in issue, for the determination of the cause of action".—
**5 T. L. J.**, *64.*

**2.** The Appellate Court, though it *usually* does not take evidence itself (and decides upon arguments and records) also "tries" the issue when it investigates the arguments and goes into the records for coming to a conclusion.—

**25 T. L. R.**, *77*
( = **1 T. L. J.**, *51* ).

**3.** "There is a difference between 'cross suits' and 'connected suits' strictly so called, though the expression 'connected suits' might be used to signify 'cross suits' also. In two cross suits, the rights claimed in one suit are identically the defences set up in the other suit, while the rights claimed in the latter suit are identically the defences set up in the former suit. (Examples of cross suits are where a landlord and a tenant bring separate suits, each against the other, on the same lease transaction, or where two traders bring suits against each other on the same set of transactions, and so on). In connected suits, the subject-matters are different, while most of the issues of facts and law are the same, and it is not necessary that the position of the parties as plaintiff and defendant in one suit should be reversed as defendant and plaintiff in the other suit. The principles of law governing the decision of the question of *res judicata* do not, it seems to me, materially differ. In two cross suits, the rights allowed and disallowed as well as the findings are the same (except in the matter of costs), whereas in connected suits most of the findings are the same, though the subject-matters and consequent reliefs are different. In cross suits, if we hold that the Appellate Court is not precluded in the appeal against the decision in the first of the suits from altering or reversing the decision by the fact of the *adjudication* in the second sui not having been appealed against by th same aggrieved party, a doubt arises whether the decree in the second suit so no appealed against, becomes *ipso facto* altered or reversed, by the alteration or reversa of the decree on the first suit in appeal though, in the natural course, the secon decree has become final. This great difficulty and anomaly is not fully faced in th decision in 29 Mad., 333, where their Lordships say that the appeal decision in th first suit would have the effect of superseding the *adjudication* in the second suit, bu that it was not necessary to consider wha might be the exact legal effect of sucl supersession. "However in the case o connected suits, the said difficulty does no arise, as the reliefs granted and the decre passed in one connected suit cannot b superseded by the reliefs and decree in th other connected suit; and the only questior will be whether the *findings* in one connected suit the decision of which has become final, are *res judicata* and binding o the Appellate Court to which appeal ha been preferred from the decision in th other connected suit. The strength of th doctrine of *res judicata* is not so powerfu in the case of cross suits as in the case o connected suits for, in the former case, th decisions and decrees themselves are practically the same (except in the matter o costs), whereas in the case of connected suits, the decrees are essentially different and whereas in the former case, an appea against the decree in one of the cross suit might be considered as an appeal practically in both suits, and hence as affecting the decision and findings in both suits, th same considerations do not apply to decree in connected suits."—**27 T. L. R.**, *77*
( = **1 T. L. J.**, *51*)

**4.** One of the essential requisites for the operation of the rule of *res judicata* is that the parties in the second suit must have been parties in the prior suit or their privies. One person becomes privy to another (1) by succeeding to the position of that other as

regards the subject of the estoppel, (2) by holding in subordination to that other. Privies so far as the rule of estoppel or *res judicata* is concerned are of three classes:— (1) privies in blood, (2) privies in law, and (3) privies in estate.

It has to be remembered that privity for the purpose of the operation of these rules arises from property and not personal relation. 'To make a man a privy to an action he must have acquired an interest in the subject-matter of the action either by inheritance, succession or purchase from a party subsequently to the action or he must hold property subordinately."

The first class of cases (privies) set forth above refers to persons succeeding by inheritance. The second class contemplates cases that come in by act in law, such as tenants by the courtesy, testator and executor and the like. The third class includes cases of derivative interest acquired by the person concerned.— **43 T. L. R.**, *108* ( = **17 T. L. J.**, *593* ).

VI. **1.** To be a *res judicata*, there must be an adjudication of some sort, and not a mere non-suit.— **2 T. L. R.**, *33*.

**2.** No proposition of law is more firmly established than that when, in a former suit, the parties were the same and appeared in the same capacity and the same point was in issue, the judgment on such point is conclusive on those parties. It makes no difference so far as the question of *res judicata* is concerned that the form of action is not the same in each case. The conclusive effect of a *res judicata* extends to any matter which it was necessary to decide and which was actually decided as the ground work of the decision itself though it does not extend to any matter which came collaterally in question.— **7 T. L. R.**, *177*.

**3.** The rule of *res judicata* applies to an issue as well as to a suit once tried and determined between the same parties or those under whom they claim.— **18 T. L. R.**, *222*.

**4.** The rule of *res judicata* applies alike both to claims and pleas.— **21 T. L. R.**, *127*.

**5.** The rule of *res judicata* applies as much to execution as to suits.— **29 T. L. R.**, *204*.

**6.** Section 9 of the Civil Procedure Code (old) applies to the retrial of any issue as well as of a whole case.— **1 S. D.** *277*.

**7.** An innocent party can plead fraud in a subsequent suit in order to make the former judgment a nullity so far as that former judgment is sought to be used as *res judicata* in respect of a collateral matter, that is, in respect of a finding or other matter not affecting the actual rights and liabilities created and established by the former decree.— **K. P.**, *578*.

**8.** The rule of *res judicata* only prevents, in certain circumstances and under certain conditions, the *trial* of a suit or an issue which has already been heard and decided. It does not operate so as to invest the finding with the effect of a decree. A declaratory decree, on the other hand, *confers a distinct specific relief*.— **34 T. L. R.**, *116* ( = **8 T. L. J.**, *218*).

**9.** It is undisputed law that the findings in a judgment upon matters which subsequently turn out to be immaterial to the grounds upon which a suit is finally disposed of, as to the plaintiff's right to any relief sought by him as declared by the decree amount to no more than *obiter dicta* and do not constitute a final decision.— **9 T. L. J.**, *323*.

**10.** The cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It relates entirely to the grounds set forth in the plaint as the cause of action, or in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.

"For findings to operate as *res judicata*, they must have been findings upon which the decree or some operative part of it was made, and must have been findings which were necessary for the making of the decree in the way it or some operative part of it was made, and it is the decree read in the light of such findings and not the findings in the judgment apart from the decree which finally decides the matter in issue."

Where the issue is not necessary for the decision of the suit, the decree couched in general terms does not cover the finding on that issue. It is, however, equally clear upon the authorities that if two or more issues are so decided that the decree may have been based on either or any of the decisions, every one of the decisions will be deemed final and will constitute *res judicata*.

When the judgment discloses that, in spite of decisions on several issues, the decision on one issue is made the sole basis of the decree, there can be no difficulty in treating the decisions on the other issues as not final and as not operating as *res judicata*; but when the decisions on various issues are treated as cumulative or additional ground for disposal of the suit, it will be difficult to say that those decisions will not have the effect of *res judicata* in a subsequent suit.

The principle of *res judicata* applies not only to the trial of suits but also to the trial of issues.— *Ibid.*

11. Where a decision has been given on a state of the law as it existed at the time, that decision will be *res judicata* in a subsequent suit even though the law has since been altered by a Statute having retrospective effect on for that matter by a judicial decision.— **32 T. L. R.**, *190.*

—

### I. MATTER IN ISSUE.

1. The obtaining of money decree upo[n] a hypothecation bond is no bar to a fres[h] suit for the enforcement of the obligee' right of lien on the property hypothecated **3 T. L. R.**, *2*

2. The dismissal of a suit for default t[o] adduce evidence by the plaintiff, in whic[h] the defence was that the cause of actio[n] had not arisen and that the Court had n[o] jurisdiction, cannot be a bar to a subsequen[t] suit in the proper Court, when the cause c[of] action actually arises.— **3 T. L. R.**, *3*

3. The plaintiff claiming to be the Ka ranavan of the Tarwad sued to set aside a[n] attachment of some property of the Tar wad. His claim was rejected upon whic[h] he brought this suit to establish hi[s] claim and raise the attachment. In a for mer suit which the plaintiff brought again[st] the 1st and 2nd defendants for part of th[e] property belonging to the Tarwad, it wa[s] decided that the plaintiff having been ad opted into another family, had no claim t[o] the property of his natural Tarwad. Th[e] defence contended that the decision in th[e] former suit barred the present suit.

*Held.*—It is a fundamental rule of la[w] that the decision of a Court of competen[t] jurisdiction on a point directly and substan tially before it, binds the parties thereb[y] and debars them from contesting the sam[e] point in a subsequent suit between them.

The point decided in the former suit de clared the status of the plaintiff in relatio[n] to the 1st and 2nd defendants and thei[r] family, and the adjudication was conclu sive as between them. The fact that th[e] prior suit had reference to a different piec[e] of land did not affect the question as t[o] whether the decision operated as *re[s] judicata.*— **6 T. L. R.**, *9*

4. Plaintiffs, Ooranmakar of a Devaswom sued to recover the property in disput from defendants whose ancestors had take[n] it on Venpattom lease. The defendants de nied plaintiff's claim and pleaded that [...]

was *res judicata* by a former decision. The question was whether the plaintiffs were entitled in the face of the final decree in the former suit declaring defendants permanent tenants of the Devaswom, to which decree the plaintiffs were parties both in the original and appellate Courts, to re-open the question of the nature of the defendants' tenancy in the present suit.

*Held.*—They were not. Though the plaintiffs were arrayed as defendants along with the present defendants in the former suit, yet they were, to all intents and purposes, real plaintiffs, as the plaintiff in that suit claimed through them and sued really on their behalf to obtain an ejectment. The mere accidental fact that they were defendants and not plaintiffs, as they ought to have been, and as they could have been made under the Civil Procedure Code, either on their own motion or at the instance of the Court, during the progress of the suit in the original Court, did not make the least difference in the effect of the decree as against them. Otherwise, there is no object gained by bringing into a suit all those interested in the subject-matter thereof, and multiplicity of suits would be the result.

Where a plea of *res judicata* is set up, the main point to be considered is whether the matter in question was directly and substantially in issue between the same parties and was finally adjudicated upon in the previous suit; and it makes little difference whether the parties were marshalled in the one case differently from the other, so long as they had the fullest opportunity of contesting the point decided.

The defendant in the case had already been through two Courts and had obtained a final decree in the highest Court of the country in a suit to which the plaintiffs had been parties—not nominal but really interested in the result—and which had been instituted by one who had been put forward by them as their proxy and after all that trouble and expense, to be subjected to another harassing litigation, at the instance of the present plaintiffs themselves exactly on the same basis and for the same relief, would be to make judicial proceedings a mere farce.— **6 T. L. R.**, *100.*

5. A and B obtained a decree against C for recovery of certain property with mesne profits. They subsequently sued also C, D, E and others, the alienees of C, to recover from them mesne profits on the portions of the property held by them, during the pendency of the former suit, from the date of their alienation.

*Held.*—The claim against C was *res judicata* inasmuch as a decree had already been obtained against him on the same cause of action for the same relief, but the claim against D, E and others, the alienees, *pendente lite* was not open to that objection because they were no parties to the former suit.

A and B had a cause of action for profits against all those who held possession of their properties since the decree in the former suit did not deal with that claim.
**6 T. L. R.**, *121.*

6. The defendant had a money-decree in O. S. No. 917 of 1059 against the plaintiff. In execution it was agreed that defendant should receive 350 fanams in full satisfaction of the decree. Plaintiff executed a mortgage-deed to the defendant's wife for this amount and also for 250 fanams which he was to borrow. But the defendant instead of certifying satisfaction of the decree recovered the whole decree amount. Defendant's wife sued the plaintiff and recovered the whole mortgage amount. Plaintiff sued the defendant and his wife to recover the said 350 fanams, but it was dismissed on the ground that there was no cause of action. The present suit was against the defendant alone to recover the amount realized in execution of O. S. 917 of 1059 together with interest.

*Held.*—The plaintiff's cause of action in the case was the defendant's failure to certify satisfaction of the decree and the

plaintiff was entitled to claim as damages, what he had lost by the execution of the said decree.

The mere accident that the defendant was a party to the previous suit cannot make the decree in one *res judicata* with regard to the claim in the other, the cause of action being entirely different.— **7 T. L. R.**, *59*.

**7.** A party is bound to bring forward his whole case in respect of a matter in litigation and open to him upon the points of decision in the suit. He cannot abstain from relying upon, nor abandon, a ground of claim which is in question and proper for consideration and decision in the suit, and afterwards make it a fresh cause of fresh suit in respect of the same subject-matter.— **7 T. L. R.**, *171*.

**8.** If any slight variation between the cause of action in the former suit and the cause of action in the subsequent suit, be held sufficient to re-open a litigation even in cases where the Courts find that they are substantially one and the same, the conseqence would be a frightful increase in the inaccuracies in pleadings and a virtual repeal of the law of *res judicata*. In cases of this kind, the question for the consideration of the Courts is whether the cause of action in the subsequent litigation is substantially the same as in the former suit; and the variations in the date, amount or the like must be duly considered in arriving at a decision.— **8 T. L. R.**, *62*.

**9.** The mere fact that no specific issue was raised in the former case, will not prevent the operation of the rule of *res judicata*, if in substance the matter was heard and determined therein (F. B.).— **11 T. L. R.**, *112*.

Ref.—2 S. D. 40.

**10.** The plea of *res judicata* taken and determined in the original Court, may be entertained in special appeal, even though it was not urged in the regular appeal.

Where a suit for cancelment of an attachment was based on plaintiff's claim to the property under a division, and the issue as to division was considered and decided against him, and a second suit for the same purpose was instituted on the ground that the attached property is plaintiff's inheritance from his father:

*Held.*—It was open to plaintiff to have based his title in the former suit, on division or inheritance. It was plaintiff's right to possession, by whatever title it might be sustainable, that was heard and determined in the former suit; and the mere change of the form of action would not save the present claim for being *res-judicata* by the decision in the former suit.— **11 T. L. R.**, *154*.

**11.** A, a timber merchant of Quilon, sued B, also a timber merchant residing in Madras, for recovery of a certain sum of money on account of loss sustained by the former by the act of the latter in selling timber at Madras below the rate agreed upon. B pleaded that he having already obtained a decree on the same transaction against A in the Madras Court of Small Causes, A's suit as against him was *res judicata*. The decree obtained by B was *ex parte*. A tried to get the decree set aside, but failed. He then instituted the present suit. The question was whether A's suit was *res judicata*.

*Held.*—Under Section 9, Explanation II, [=present Explanation IV], Civil Procedure Code, any matter which *might* and *ought* to have been a ground of defence in a former suit, shall be deemed to have been directly and substantially in issue in such a suit. The present claim being one which arose in the same transaction, it was A's duty to have pleaded it in the former suit and the first suit having been disposed of on the merits by a Court competent to adjudicate on the present claim, A was barred from maintaining this action.

An *ex parte* judgment is final until set aside. The word "review" in the Clause (Explanation IV to Section 9) includes an

application to set aside an *ex parte* judgment.— **14 T. L. R.,** *6.*

Fol.—21 T. L. R., 41.

**12.** A plaintiff whose claim for future mesne profits was neither expressly allowed nor refused in the decree, might be allowed to bring a fresh suit for profits from the date of the decree up to the date of satisfaction of the decree (F. B.).—

**16 T. L. R.,** *1.*

Dist.—43 T. L. R., 157
( =17 T. L. J., 629).

**13.** A Jenmi obtained a decree for ejectment of his tenants and for three years' future Michavarom from the date of the decree. He did not get possession of the lands for some time. The present suit was for recovery of mesne profits that accrued subsequent to the three years fixed in the prior decree.

*Held.*—The plaintiff's suit for the subsequent mesne profits was not *res-judicata* and was maintainable.— **17 T. L. R.,** *115.*

Fol.—33 T. L. R., 281
( = 7 T. L. J., 326).

**14.** The pleadings and judgment might be looked into to ascertain the real object of a plaint or the meaning of a decree. Though the appeal was against the decree alone the relief claimed in the appeal memo involved a declaration of defendant's title just as the relief claimed in the plaint involved a delaration of plaintiff's title. When findings as to title are necessary and form the indispensable basis of the grant of consequent relief, the title also forms the subject-matter of the suit. "In order to see what has been in issue in a suit or what has been heard and decided, the judgment must be looked at. The decree does not afford any information as to the matters which were in issue or have been decided" (F. B.).— **21 T. L. R.,** *1.*

**15.** P sued D to establish title to and recovery of possession of the plaint land. In a prior suit by P to recover the value of the crop alleged to have been unlawfully carried away by D, the question of title to the land was directly and substantially in issue and found against P.

*Held.*—The finding in the prior suit with regard to the question of the title operated as *res judicata* in the subsequent suit.

The position that in order to raise an estoppel by a prior judgment, the cause of action in the second suit must be in all respects the same as in the first, is repugnant to the reasons of public policy embodied in the maxim "*Interest republicae ut sit finis litum*" and is also opposed to the doctrine that the rule of *res judicata* applies alike both to claims and pleas.—**21 T. L. R.,** *127.*

**16.** In a suit by the vendee for cancellation of a sale deed on the ground of fraud and misrepresentation on the vendor's part where plaintiff claimed a prior lien to take precedence over a hypothecation decree to which he was a party and where he further claimed, in appeal, damages for breach of an express warranty of title :

*Held.*—Where a purchaser had partial notice of a fact or instrument, he should be held to have had notice of all connected facts and instruments. Fraud and misrepresentation, being serious allegations charged against the person sought to be made liable, must be positively proved and such proof was wanting in the case. One cause of action giving rise to one set of reliefs cannot be altered into a different cause of action giving rise to different and inconsistent reliefs. Where both parties knew the defect of title, the purchaser could not claim the benefit of the usual implied covenant for title and if a prior mortgagee be made a party to a suit by a puisne mortgagee and omits to set up his prior lien and a decree is passed generally for sale without imposing a liability on the subsequent mortgagee in favour of the first mortgagee, the latter cannot afterwards bring a suit to enforce his prior lien (F. B.).—

**21 T. L. R.,** *256.*

Ref.—28 T. L. R., 51.
37 T. L. R., 209
(=11 T. L. J., 151).

**17.** A, as tenant of B sued C, who claimed to be a lessee under D, for recovery of property alleged to have been demised. C and D were made *pro forma* defendants. The only issue tried was "whether it was A or C who cultivated the property on lease." It was decided in favour of C and the suit was dismissed.

B subsequently brought a suit against C and D for recovery of the property. It was contended that the second suit was barred by *res judicata*.

*Held.*—The contention on the question of *res judicata* was not maintainable.

A finding must be certain and definite in order to constitute *res judicata*.

*Obiter.*—If the Karanavan of a Malabar Tarwad conducts a Tarwad litigation *bona fide* without fraud or collusion, his mere negligence cannot prevent the result of the litigation being *res judicata* against the other members of the Tarwad.—

**22 T. L. R.**, *270*.

**18.** Plaintiffs 2 and 3 the owners of plaint properties had mortgaged same to the 1st defendant in 1073. First defendant had obtained a money decree in 1244 of 1077 against the vendors. After this decree the properties were conveyed on sale to first plaintiff. First defendant instituted suit No. 1135 of 1079 for a declaration that the sale was had to defraud him of the payment of the decree amount in 1244 of 1077. In that suit it was held that the sale was effected to defeat the creditor—the first defendant. The decree amount due to the first defendant was paid by the first plaintiff and the present suit was instituted for redemption, the plaintiffs 2 and 3 admitting in the plaint that 1st plaintiff was entitled to redeem. On the first defendant's contention that the sale deed having been found to be fraudulent in suit No. 1135 of 1079 between the same parties, that finding operated as *res judicata* and that therefore the present suit was not maintainable.

*Held.*—Though the finding in 1135 of 1079 that the sale was fraudulent was *res judicata* against 1st plaintiff in 1st defendant's favour, that would only operate as a finding that, on the date of that decision, 1st plaintiff had no title which he could set up against the 1st defendant, and that finding was not a bar to the present suit brought after payment of the prior decree amount, as in this suit the vendors had by their admission in the plaint that 1st plaintiff was entitled to sue for redemption created title in 1st plaintiff.— **23 T. L. R.**, *145*.

**19.** The rule of *res judicata* applies alike to claims and pleas. In order that the rule should have operation, it is essential that there should be a decision substantially on the points raised either by a specific issue or on the pleadings.— **2 S. D.**, *40*.

**20.** Where the Court of first instance tried together two cross suits but passed separate decrees in each and the appellant who was first defendant in the other suit which was earlier not having appealed against the findings and decree in that suit, the question was raised whether that decision would be a bar under Section 9 C.P.C., to the present appeal.

*Held.*—If at the time two suits were tried together, there was no bar by reason of Section 9 C. P. C., there could be no subsequent bar in appeal arising from a decision unappealed against. "It would lead to startling results if we were to hold that appellate tribunal is precluded from dealing with a question which comes before it on appeal, because an inferior Court, upon the same facts but in a case other than the case under appeal, had given a decision which had not been appealed against at the same time as the decision in the case under appeal.—

**K. P.**, *402*.

**21.** Where the defendant obtained a decree for redemption of a mortgage of 1049 and tried to execute the decree, she was resisted by 2nd plaintiff who claimed the property by purchase from an assignee of the mortgage of 1049. As the objection

was disallowed by the execution Court, plaintiffs brought the present suit to cancel the said decree on the ground that the mortgagor in question was their Karanavan and not the defendant's. This was denied by the defendant. Though both the lower Courts found in defendant's favour, yet the Court of first instance holding that a decision in a former suit that the mortgagor was not the Karanavan of Omminy (defendant's Karanavan) operated as *res judicata* against defendant's plea, gave a decree for plaintiffs. The lower Appellate Court, however, reversed that decree on the ground that the bar of *res judicata* would not apply as the properties litigated in the two cases were different.

*Held.*—(1) The bar of *res judicata* applies to an issue as well as to a whole case irrespective of the difference in the properties involved in the two suits.

*Per Sadasiva Aiyar, C. J.*—The defendant in this case may be treated as constructively a party to the former suit and an innocent party can plead fraud in a subsequent suit in order to make the former judgment a nullity when that former judgment is sought to be used as *res judicata* in respect of a collateral matter, that is, in respect of a finding or other matter not affecting the actual rights and liabilities created and established by the former decree. If the rights and liabilities themselves are sought to be nullified that decree must be set aside by appropriate proceedings.

(2) As the lower Courts concurrently find after remand, that Omminy's conduct of the prior suit in not prosecuting the appeal in the District and High Courts was fraudulent, there was no *res judicata* and the Zillah Court's decree should be confirmed.— **K. P.**, *578.*

**22.** An erroneous decision in a suit on a question of law will not operate as *res judicata* in a subsequent suit, if the causes of action in the two suits are different.—

**I T. L. J.**, *33.*

**23.** Three suits were filed by a Jenmi for recovery of Michavarom and other dues against the same tenant, each in respect of a separate Kanom deed. The contentions and issues in all the suits were the same. The three suits were disposed of by one judgment. From the decrees of two of the suits, appeals were preferred to the District Court as the value of each of the suits was less than Rs. 500. The District Court dismissed the appeals. From the decree in the third suit the value of which was more than Rs. 500, both the plaintiff and the defendant appealed to the High Court.

*Held.*— The findings in the two connected suits, though they were decided by a subordinate tribunal were binding on the High Court, and the matter in appeal was therefore *res judicata.*

The Appellate Court, though it usually does not take evidence (and deals upon arguments and records) also "tries" the issue when it investigates the argument, and goes into the records for coming to a conclusion (F. B.). — **25 T. L. R.**, *77*

( = **1 T. L. J.**, *51*).

Ref.—26 T. L. R., 70

( = 1 T. L. J., 191).

19 T. L. J., 241.

**24.** Plaintiff's predecessor brought a suit to redeem the plaint properties from a mortgage of 1043. It was dismissed on the ground that he failed to prove the particular mortgage. Subsequently the plaintiff brought a suit for the redemption of the same property from a mortgage of 1040. It was contended by defendants that the suit was barred by Sections 9 and 39, C. P. C. [ = Sec. 10 and Or. II, r. 2 ].

*Held.*—(1). The alleged mortgage of 1043 on which the former suit was based was a transaction substantially and in every way different from the mortgage of 1040.

The real test to be applied to find whether there is a bar is whether the cause of action or transaction on which the two suits are based is the same, and not whether the

transaction is sought to be established in different modes or by different means.

(2) The cause of action (the rights in respect of which the plaintiffs demand judgment) for the subsequent suit being entirely different from that for the previous suit, Section 39, C. P. C., which simply enjoins that the whole claim arising out of the same cause of action should be included in one suit, could have no application.

(3) Explanation II to Section 9, C. P. C. did not render it incumbent on a plaintiff to combine as grounds of attack every cause of action he might have had at the date of suit in respect of the property sued for, the principle being that where the several independent grounds of action are available, a party is bound to unite them all in one suit, though he is bound to bring before the Court all grounds of attack available to him with reference to the title which is made the ground of action.

The Explanation does not support the position that a plaintiff who seeks to redeem a specific mortgage which is not proved is thereby precluded from seeking to redeem the same property from another specific mortgage.— **25 T. L. R.**, *118*.

Ref.—27 T. L. R., 51
[= 2 T. L. J., 156 ]
5 T. L. J., 64.

Fol.—35 T. L. R., 80.

**25.** The trustees of a Devaswom sued and obtained a decree for recovery of the schedule property on the strength of a lease. The decree was unexecuted, and the execution was allowed to be barred. In a subsequent suit brought within twelve years of the prior decree for recovery based on the Devaswom's title to the property, it was contended for the defence that the suit was barred by the decree in the prior suit.

*Held*,—The suit was maintainable, as the cause of action in the prior suit was different from that in the subsequent one.

As the basis of the prior suit was the legal relation of lessor and lessee and that of the present was the plaintiff's title to t land as trustee of the Devaswom, t causes of action in the two suits were diff ent, and therefore the prior decision d not operate as *res judicata*.

"A plaintiff who has once sued a defen ant to judgment, cannot, while the jud ment stands although unsatisfied sue hi again for the same cause, not because he estopped from doing so (though he as we as the defendant is estopped from averri anything contrary to the record), but b cause the cause of action is merged in th judgment, which creates an obligation of higher nature." "But there will be n merger unless the cause of action is th same, and the plaintiff had an opportunity o recovering in the first action what he seek to recover in the second; otherwise, th defendant is not twice vexed for the sam cause."

There is no difference in principle be tween a suit for recovery of property base on a lease which is dismissed and one whic is decreed, but of which execution is barred so far as its effect on a subsequent suit base on title is concerned. If in the first cas the remedy by a subsequent suit based o title is not barred, there is no reasson wh in the second case the same remedy should not be open to the plaintiff, if for some reason or other he has disabled himself from reaping the fruit of the former decree in his favour.— **27 T. L. R.**, *51*
(**=2 T. L. J.**, *156*).

**26.** The rule of *res judicata* is not restricted in its application to suits technically so called. It extends to counter-claims by a defendant as well. So, in respect of any one cause of action, it is quite as much incumbent on the defendant, as it is on the plaintiff, to set out every ground or attack that is available.— **27 T. L. R.**, *161*.

**27.** A decree for money obtained by a mortgagee does not operate as a bar to a suit for redemption by the mortgagor.—
**29 T. L. R.**, *59*.

**28.** The suit was to redeem an outstanding mortgage. The defence was that as the mortgagee had sued and obtained a decree for the money advanced, the present suit was barred by *res judicata*.

*Held.*—A decree for money without a foreclosure clause in a suit by the mortgagee for the mortgage amount does not operate as bar to a subsequent suit for redemption by the mortgagor.—

**4 T. L. J.**, *54*.

**29.** The plaintiff and K. T. were brothers. The latter sued the plaintiff and his father's brother's sons for a fourth share in certain properties, which, he alleged, were common to himself, the plaintiff and his father's brother's sons, having been acquired by his grand-father. The defence of his father's brother's sons was that the properties were not common, and K. T. was not entitled to any share. This defence was overruled, the properties were found to be common, and a decree was given for a fourth share. The plaintiff having now sued for recovery of his one-fourth share in the properties, the same defence was advanced by the appellants who were the contending defendants in the prior suit.

*Held.*—The judgment in the prior suit operated as *res judicata*, and it was not open to the appellants to urge the plea that was over-ruled in the first suit.

The finding, in a previous suit for partition brought by one co-sharer against other co-sharers as defendants, that the properties are liable to partition is *res judicata* in a subsequent suit brought by another co-sharer, who was one of the defendants in the previous suit, against the rest of the co-sharers.

The decree in a partition suit is not, like a decree for money or a decree for the delivery of specific property, a decree in favour of the plaintiff alone. The decree is, or ought to be, a joint declaration of the rights of persons interested in the property of which partition is sought, and is a decree in favour of each sharer. It decides what interest each of the sharers has in the property, the subject of partition, whether those sharers be plaintiffs or defendants; and renders unnecessary any subsequent suit by any of such co-sharers for the declaration of his interest in the property (F. B.).

**30 T. L. R.**, *113*
( = **4 T. L. J.**, *130*).

**30.** A decree was obtained against K. A., Karanavan of a Marumakkathayam Tarwad on a hypothecation bond executed by him when he was a junior member in management of Tarward affairs. Pending execution of the decree, K. A. died, and the second defendant, the next Karanavan, was impleaded as his representative. Notice was issued to the second defendant to state his objections, if any, to sale of the hypotheca (which was Tarwad property), but second defendant did not appear and contest though he accepted service of the notice. The hypotheca was sold and purchased by the 1st defendant. Plaintiffs, junior members of the Tarwad, sued to set aside the sale on the ground that K. A. was incompetent to execute the hypothecation bond and that it was unsupported by consideration and Tarwad necessity. The Munsiff dismissed the suit as not maintainable, but the District Judge reversed the Munsiff's decree.

*Held.*—Though a decree against a *de jure* and *de facto* Karanavan of a Marumakkathayam Tarwad *prima facie* binds the Tarwad, yet under the decisions of the High Court, one opportunity must be given to the junior members to have the validity of the decree tested on the ground of want of consideration and Tarwad necessity. That one opportunity had been afforded in the present case when the 2nd defendant was given notice to show cause why Tarwad properties should not be sold in execution of the decree against K. A.

The second defendant who in spite of notice remained silent, should be deemed in law to have raised the objection and failed. The order to sell was an implied

decision by the execution Court that the decree was enforceable against the hypothecated Tarwad property, and as it was not alleged or proved that second defendant remained *ex parte* through fraud or collusion, the question of the liability of the Tarwad property for the decree debt was *res judicata* so far as the Tarwad was concerned.

*Obiter.*—It has been held in 24 T. L. R., 169, that when in execution of a hypothecation decree against a Karanavan, his legal representatives are impleaded, they may resist the sale of the hypotheca on the ground that the decree-debt was not binding on the Tarwad and that the question of the liability of the hypotheca may be settled in execution under Section 238 of the C. P. C. [new Section 40]. Though it is not expressly so ruled the view in 24 T. L. R., 169 of the learned Judges appears to be that the question of liability not only *may* but *ought* to be raised and settled in execution under Section 238 of the Civil Procedure Code.— **30 T. L. R.**, *224* (**=5 T. L. J.**, *134*).

Ref.—13 T. L. J., 349.

**31.** The plaintiff who was the mortgagee of certain properties had hypothecated his mortgage rights to the defendant. The mortgagor sued for redemption and obtained a decree to which the plaintiff and defendant were parties. Subsequent to the decree, the defendant obtained a decree against the plaintiff on the footing of his hypothecation, and in execution of that decree, had the mortgage right of the plaintiff sold in auction, and purchased it himself. The decree for redemption was not executed and had become barred. The plaintiff alleging that, by the non-execution of the decree for redemption, the equity of redemption passed to the plaintiff and had become vested in him, sued to redeem the mortgage held by the defendant.

*Held.*—The equity of redemption still vested in the original mortgagor notwithstanding his failure to execute the decree for redemption in time.

The non-execution of a redemption [de]cree does not operate as a transfer of [the] decree-holder mortgagor's rights to [the] judgment-debtor mortgagee. Such n[on] execution but bars the mortgagor's right [to] recover the mortgaged property throu[gh] Court by a second suit on the ground [of] *res judicata*. The bar interposed by [res] *judicata* unlike the bar of limitation, [has] not the effect of extinguishing one's title [to] property.— **31 T. L. R.**, *1* (**= 5 T.L.J.**, *7*

**32.** Plaint property originally belong[ed] to K. Tarwad as Kanom holders. Th[ey] mortgaged it to the predecessor in intere[st] of defendants. Subsequently, K. Tarw[ad] became extinct. As a result of the escheat proceedings started on the death of the la[st] member of the K. Tarwad, the plainti[ff] got pattah for the plaint property from th[e] Sirkar. Plaintiff in 1083 sued the defend[ants] for redemption of the mortgage basin[g] his suit on a fresh Kanom from the Jenm[i] after an alleged surrender to the Jenmi b[y] the K. Tarwad, because it became extinc[t]. The alleged surrender and demise wer[e] found false and the suit thrown out. I[n] 1085, the plaintiff brought the present sui[t] for redemption on the strength of the Pat[t]ah granted to him by the Sirkar. Th[e] defence, *inter alia*, was that the suit wa[s] barred by C. P. C., Section 9, Explanatio[n] II, and that even otherwise the Pattah based as it was on the surrender and demise found to be false did not confer on plaintiff any title to the property. The Munsiff upholding the latter contention dismissed the suit. The District Judge concurred in the decree, but on the ground that the suit was barred by Explanation II to Section 9.

*Held.*—The suit was not barred by *res judicata* as the cause of action in the two suits were different.

*Krishnan Pandalai J.*:—The principle which guides the Courts in determining whether the trial of a matter arising in a subsequent suit is barred by reason that it was not, when it might and ought to have

been raised in a former suit, is to see whether the cause of action or transaction on which the two suits are based is the same and not whether the transaction is sought to be established in different modes or by different means. For, although a plaintiff or defendant is compelled to bring forward all grounds of attack or defence in reference to the cause of action on which the suit is founded, and if he omits to do so punished by Explanation II of Section 9, C. P. C., by not being permitted to rely on any such ground in a subsequent suit, there is nothing which compels a party to unite in the same suit distinct causes of action. The real difficulty is in any given case to decide whether the cause of action in the first and second suits is the same. The identity of the material object movable or immovable to which the suits relate is not a sufficient test of the identity of the cause of action; nor is diversity in that respect alone sufficient to show that the causes of action are different. The most useful and practical test suggested is whether the same evidence will maintain both actions.

*Viraraghava Aiyengar*, J:—The real test is 'whether the cause of action or transaction on which the two suits are based is the same and not whether the transaction is sought to be established in different modes or by different means.—

5 T. L. J., *64*.

**33.** The Karanavan of a Marumakkathayam Tarwad obtained a decree for redemption of a mortgage. But the decree provided that, unless he paid additional court fee within a certain date, the suit would stand dismissed. The additional court fee was not paid in time. On the Karanavan dying, the present plaintiff sought in execution to be allowed to recover the property on payment of the mortgage amount. The mortgagee successfully resisted this application on the ground that there was no executable decree as the suit was to be dismissed for non-payment of the additional court fee. Plaintiff thereupon brought this suit for redemption. Defendant-mortgagee contended that a second suit for redemption would not lie.

*Held.*—The principle applicable to a second suit for redemption of the same mortgage did not apply to the case, as there was no executable decree for redemption in the first case. Having once successfully contended that there was no executable decree for redemption, the defendant-mortgagee was estopped from contending otherwise in the present suit.— 5 T. L. J., *128*.

**34.** Suit for Thiruppuvarom payable to a temple which, though plaintiff claimed in the plaint as his private property, was at a later stage alleged to be a public institution with plaintiff as trustee. The plaintiff did not adduce any evidence that the Devaswom was a public institution. A previous suit for arrears of Michavarom for a different period on the same allegations had been dismissed. The defence was that the previous decision operated as *res judicata*. Both the Courts below held that the previous decision did not operate as *res judicata* as the subject-matter of the two suits was different.

*Held* (in second appeal).—The decision in the prior case operated as *res judicata* and the subsequent suit was not maintainable.

The identity of subject-matter was not always essential to constitute a prior decision *res judicata* in regard to a subsequent suit, and as the title under which plaintiff claimed the arrears in both suits was the same the fact that the arrears related to two different periods did not prevent the judgment in the former suit operating as *res judicata* in the latter.

"The result or fruit of the litigation at which the parties are aiming is no longer a matter for the consideration of the Courts. What is to be considered is, if the metaphor may be extended, the root of the difference between them, and the Courts are now forbidden to try any issue in which the matter directly and substantially in

issue in the subsequent suit had been directly and substantially in issue in the former suit."— 5 T. L. J., *176*.

**35.** The plaintiff, a Namburi lady, had sued for arrears of maintenance from 1078 to 1082. The defendant had objected to the claim on the ground that the plaintiff's separate living without his consent disentitled her to the claim, and that the rate claimed was too high. The Court held that as the defendant himself had not been living in the family house, plaintiff's living separately was justified, and that the rate claimed was not too high.

The plaintiff again sued for arrears of maintenance at the former rate. The defendant contended, *inter alia*, that he had been living in the family house, that the plaintiff's separate living was, therefore, not justified and that she was not therefore entitled to separate maintenance, and that the financial condition of the family having changed for the worse since the former decree, the rate claimed was too high.

*Held*,—The former decree did not operate as *res judicata* against the defendant.

A decree in a maintenance suit is not final in the sense that the rate fixed can never be altered; if there is a change in the circumstances of the family and the persons obliged by the decree they are entitled to have the rate of maintenance reduced. But, in cases such as these, the Courts would require clear proof of materially altered circumstances before interfering with the terms fixed by the previous decrees and would not allow the rule which prohibits the re-agitation of *res judicata* to be disregarded by a mere allegation of altered circumstances.—31 T. L. R., *117* (=5 T. L. J., *289*).

**36.** A suit for Thiruppuvarom for the years 1039 to 1050 was dismissed on the ground that a claim for Thiruppuvarom was not a claim for rent but constituted an interest in land, and the non-exercise of the said right for 12 years effectually barred the party seeking to recover. Subsequen[tly] the view prevailed that a claim for Thir[u]puvarom was a claim for rent, that it wa[s a] recurring cause of action and that the n[on-] exercise of the claim for any length of ti[me] would not bar the right. Plaintiffs broug[ht] a suit for the arrears from 1077. The clai[m] was resisted on the ground that the pr[e]vious decision operated as *res judicata*.

*Held*,—The previous decision did n[ot] operate as *res judicata*. If Thiruppuvaro[m] was rent and the claim was a periodicall[y] recurring one, as it undoubtedly was, i[t] was clear that the cause of action for th[e] Thiruppuvarom that was claimed in the present suit was different from the cause of action for the claim made in the previou[s] suit, and the subject-matter of the two suits was different.

*Further*, an erroneous decision on a question of law in a former suit is binding on the parties thereto only as far as the subject-matter of that suit is concerned and does not prevent the Courts from deciding the same question rightly between the same parties in subsequent suits where the subject-matter of the suit is different.— 6 T. L. J., *357*.

**37.** If in respect of a cause of action, the plaintiff omits to sue for all the reliefs which result therefrom, he would be precluded from suing for them in a subsequent suit.

The advantage which a suitor may obtain solely from the operation of the rule of *res judicata* is not a *relief* for which he is bound to pay fees under the Court fees Regulation (F. B.).— 34 T. L. R., *116* (= 8 T. L. J., *218*).

**38.** The plaintiffs as representing one of four branches of an Ezhava Tarwad which, by long separate residence and course of conduct had become divided among themselves, sued for recovery of their one-fourth share of items 1 and 2 of the plaint properties. They also alleged that item No. 1 had originally gone out of the Tarwad, and that

their branch Karanavan, M. had recovered it on payment of money from their sub-Tarwad funds, and to this extent they claimed a special interest in item No. 1 and sought as contribution from the defendants who represented the other branches three-fourths of the above amount.

Prior to the present suit M. brought a suit (O. S. No. 597 of 1071) against the defendants for declaration of title to and recovory of possessson of item No. 1 on the allegation that he had recovered the property with money that he had obtained as Makkathayam gift and that he had a right to retain posssession of the property till his special lien was discharged. This suit was dismissed on the ground that the property had not been acquired with funds M. had obtained as Makkathayam.

The defendants contended that the suit was barred by *resjudicata* by reason of the judgment in O. S. 597 of 1071 so far as the recovery of the money was concerned.

*Held* (*Per R. Viraraghava Iyengar and Sesha Iyer J. J., Palpu Pillai J. dissenting*).-The judgment in the prior suit did not operate as *res judicata* to the present suit. The cause of action in both the suits were not the same.

*Per Sesha Iyer, J.*—The plea of *res judicata* depends upon the exact effect of a decision. The plea of *res judicata* being one in restraint of the right of a litigant to have his case fully tried and determined, the judgment which is pleaded in bar of this right must be strictly construed.

The prior suit was brought on the basis that the acquisition was made by M. with his Makkathayam funds and as such he had a special right which the defendants had violated by dispossessing him of the property. The Court held that the property had not been acquired with funds M. had obtained as Makkathayam and the special right based thereon which he pleaded was negatived. On that ground and on a further ground that the property was in the possession of the Tarwad Karanavan, the prayer for recovery of possessson was refused, the plaintiff's right, if any, being according to the Munsiff, to sue for the money. The present suit was brought for contribution in respect of money spent by M., as co-mortgagor with the defendants, for recovery of the property that was outstanding with a stranger, on the ground that the amount so spent was funds of plaintiffs' branch Tarwad of which M. was the senior member. The scope of the findings in the prior suit was specifically confined by the pleadings, and it is obvious that the cause of action and the relief prayed for there were different from the cause of action and the relief sought in this suit. A plaintiff may not, of course, evade the application of the rule of *res judicata* merely by varying his form of pleading or by describing the subject-matter of his suit or expressing his rights in different language; but it is also generally agreed that a plaintiff is not bound to put forward in one suit all his titles to the subject sued for, nor when several independent grounds of action are available to him to unite them all in one suit.

*Per Palpu Pillai, J.* (dissenting).—The cause of action in the two suits was substantially the same.— **9 T. L. J.**, *323*.

**39.** The suit was for redemption of a mortgage given by the plaintiff's ancestor to the Karanavan of the defendant. The defendant denied the mortgage.

*Held.*—The recital of the admission that he held the plaint property under a mortgage from the plaintiff's family, made by the defendant's Karanavan as a defendant in a prior suit instituted by the plaintiff's father against his co-sharers for a partition of the family properties including the plaint property, was admissible as relevant evidence of the admission of the plaintiff's title by the defendant's Karanavan.

The former suit was a suit for partition, while the present suit was one for redemption. The issues that arise in this case could not, from their very nature, have

arisen in the former case. In fact the causes of action in the two suits are quite different. The plea of *res judicata* must therefore fail.— **36 T. L. R.**, *187*
(**=10 T. L. J.**, *143*).

Rel —16 T. L. J., 277.

**40.** Where one of the respondents to an appeal dies during the pendency thereof and the appeal abates so far as that respondent is concerned by reason of no one being brought on record in that place,

the decision of the lower Court does not become final nor does it operate as *res judicata* as regards the other respondents.

Section 9 or the principle of *res judicata* of which the Section is held to be an imperfect embodiment is not applicable. To invoke this principle, there must be a final determination of the question that is subsequently raised. There is no such final determination here as the decision of the District Munsiff was deprived of its finality when an appeal was preferred. On the filing of the appeal, the judgment ceased to be operative as *res judicata* and became *res subjudice.*

The abatement of the appeal by the death of one of the respondents cannot affect the prosecution of the appeal against the other respondents when the right of the appeal survives against them.— **14 T. L. J.** *267*.

Ex.—42 T. L. R., 231
(=17 T. L. J., 436).

**41.** *Per Viraraghava Iyengar, C.J.*—"An erroneous decision by a competent tribunal on a question of law directly and substantially in issue between the parties to the suit does not prevent a Court from deciding the same question arising between the same parties in a subsequent suit according to law. The Court cannot of course allow the correctness of the decree in the former suit to be questioned in the later suit on the ground that the former suit was decided under a mistake of law, nor can it pass a decree the effect of which would be to set at naught in whole or in part the decree in the former suit."

*Per Raman Tampi, J.*—Though a decree in a former suit is binding on the parties thereto in so far as it affects the subject-matter thereof, no decision on a point of law involved therein has such binding force except to the extent of the same being necessary for the conclusiveness of the facts so decided.

It is also well understood that where it is sought to apply the estoppel of a judgment rendered upon one cause of action, the inquiry must always be as to the point or question actually litigated and determined in the original action, not what might have been thus litigated and determined, and that only upon such matters is the judgment conclusive in another action.—
**41 T. L. R.**, *220*
(**=14 T. L. J.**, *620*).

**42.** The members of a Tarwad can be allowed to impeach documents executed by other members, even though the latter failed to do so in a former suit based on such documents. The latter suit cannot operate as *res judicata*.— **16 T. L. J.**, *550*.

**43.** Plaintiff sued defendants on a Chitty hypothecation bond, executed by one P., deceased Karanavan of defendants 1 and 2. The defendants resisted the suit. In the course of the trial, the plaintiff stated that he would be satisfied with a decree against the separate assests of the deceased. In execution, the plaintiff attempted to proceed against the hypotheca. On the question whether he could do so :

*Held.*—The plaintiff's statement that he was content with a decree against the separate assets of P., implied the abandonment of his claim to enforce the debt on the hypothecated properties within the meaning of Explanation III of Section 9 of the old C. P. C. The plaintiff was, therefore, estopped from proceeding against the hypotheca.— **18 T. L. J.**, *851*.

**44.** See also—

Or. II, r. 2.— 2 S. D., 157.
22 T. L. R., 157.

## II. PARTIES.

1. As suits against Malayali families were invariably brought against the Karanavan alone, a decree against the Karanavan binds generally the other members of the Tarwad as if they were parties.— **4 T. L. R.,** *42.*

Fol.—9 T. L. R., 78.
Ref.—21 T. L. R., 41.

2. An ex-parte judgment is good for purposes of *res judicata* provided the parties are the same.— **6 T. L. R.,** *19.*

3. Judgments of Courts must be accepted as declaring facts as they truly are and parties thereto are entitled to their legal rights flowing from such judgments whatever may have been their averments or contentions in the litigations which resulted in those judgments.— **6 T. L. R.,** *78.*

Fol.—13 T. L. R., 114.

4. Where a plea of *res judicata* is set up, the main point to be considered is whether the matter in question was directly and substantially in issue between the same parties and was finally adjudicated upon in the previous suit; and it makes little difference whether the parties were marshalled in the one case differently from the other, so long as they had the fullest opportunity of contesting the point decided.— **6 T. L. R.,** *100.*

5. The decree obtained against the junior members of a Malabar Tarwad, does not operate as *res judicata* against the Tarwad, *i. e.*, against its other members.

The sale of Tarwad property held in execution of a decree against the junior members, cannot affect the interests of the Tarwad in that property.— **7 T. L. R.,** *137.*

Ex.—14 T. L. R., 128.

6. A decree obtained against a mere manager of a Malabar Tarwad, who had not the full rights and privileges attaching to the position of a Karanavan and who is known to have acted in breach of his duty, in a suit to which the Karanavan was not a formal party and had no opportunity of proving the claim of his Tarwad, cannot operate as *res judicata* against a subsequent suit based on the same claim and instituted by representatives of that Tarwad.— **8 T. L. R.,** *33.*

7. A judgment passed in a suit to which the Karanavan of a Marumakkathayam Tarwad is a party will bind all the other members thereof, though the latter may not be the parties specially named in the record. If the rule were otherwise, the principle of *res judicata* can never be applied to Malabar Tarwads.

If any slight variation between the cause of action in the former suit and the cause of action in the subsequent suit be held sufficient to reopen a litigation even in cases where the Courts find that they are substantially one and the same, the consequence would be a frightful increase in the inaccuracies in pleadings and a virtual repeal of the law of *res judicata*. In cases of this kind, the question for the consideration of the Courts is whether the cause of action in the subsequent litigation is substantially the same as in the former suit; and the variation in the date, amount and the like must be duly considered in arriving at a decision.

In the case, the cause of action was substantially the same as the one on which the prior suit was based; and as the present plaintiff (the Karanavan of the Tarwad) was a party to that litigation, the decision passed therein bound all the plaintiffs (F. B.).— **8 T. L. R.,** *62.*

Fol.—18 T. L. R., 20.
Ref.—21 T. L. R., 41.
25 T. L. R., 118.
31 T. L. R., 104.

8. The act of the Karanavan, in the absence of fraud or collusion, is the act of the whole Tarwad. A decree or judgment passed in a suit brought by or against a Karanavan binds all his Seshakars and operates as *res judicata*. An order under Section 230 (old C P. C.) has the same force

of *res judicata* as a decree in an original suit.— **9 T. L. R.**, *78.*

[Sec. 230 referred to dealt with the investigation of claims and objections to sale of attached property.]

Ref.—21 T. L. R., 41.

**9.** Suit by plaintiffs, Kysthanakkars of a Devaswom, to have a Venpattom lease, granted by the 1st to 2nd defendant cancelled on the ground of the former's incompetency to do so. The Zilla Judge, in effect, held that the 1st defendant was precluded by a former decree to which he was party, declaring plaintiffs alone to be competent to grant leases on behalf of the Devaswom, and allowed the plaintiff's claim.

*Held.*—The 2nd defendant, being the person who claims to retain the property in virtue of the lease, has a substantial interest in the present suit, the 1st defendant being a party *pro forma*. The 2nd defendant being no party to the previous decree, and the property now in suit being different from the subject-matter of the former suit, the judgment in the prior suit could not operate as a bar against the 2nd defendant who is the real defendant in the case. The fact that 1st defendant is a formal party to the present suit, could not alter the aspect of the case (F. B.).— **9 T. L. R.**, *86.*

**10.** An order passed on a claim petition by the Court executing the decree has no force of *res judicata.* Its only effect is that after a lapse of one year from the date of its passing, the parties to it cannot question its validity or legality as regards the particular property to which it relates.— **10 T. L. R.**, *37.*

Fol.—18 T. L. R., 200.

**11.** In the absence of positive proof of fraud and collusion, the Seshakars will be bound by the decree passed against their Karanavan. The mere fact that a reconsideration of the genuineness of the debt-bond on which the decree was passed would lead the Courts to a conclusion different from the one already arrived at in the sui against the Karanavan, is not sufficient t raise a presumption of fraud and collusio in obtaining that decree.— **10 T. L. R.**, *46*

Fol.—18 T. L. R., 20.

Ref.—21 T. L. R., 41.

**12.** (1) Under Section 9 of the Civil Procedure Code, the rule of *res judicata* ap plies to claims as well as to pleas. The tria of the issue prohibited under this Section may be one raised by the plaint or the writ ten statement of the defendant, or by th contention of the defendant raised at th first hearing of the suit. The issue nee not necessarily be raised by, or founded upon, the pleadings of the plaintiffs alone.

(2) A decision in favour of, or against the Karanavan of a Tarwad, in a suit *bona fide* prosecuted or defended, binds th whole Tarwad, unless and until fraud o collusion in obtaining that decision is established.

(3) The mere fact that no specific issue was raised in the former suit, will not prevent the operation of the rule of *res-judicata,* if in substance the matter was heard and determined therein.

(4) Section 332 of the old Civil Procedure Code says:—"Upon the hearing of the appeal, the respondent may take any objection to the decision of the lower Court which he might have taken if he had preferred a separate appeal from such decision." It is silent as to the mode in which objections should be taken to the lower Court's judgments.

Where the final judgment shows that a certain objection was taken, though not in writing, and allowed by the final Appellate Court, the decision with respect to the objection cannot be impugned in a subsequent suit, as based on an objection improperly taken and wrongly allowed.

(5) The decision of a competent Court, though based on an erroneous view of law or fact, will operate as *res-judicata* in a

subsequent suit, provided the other conditions of *res judicata* exist (F. B.).

*Held on Review affirming the foregoing rulings* (1) and (2):

The phrase "right claimed" in Explanation V of Section 9 of the Civil Procedure Code (Regulation II of 1065), applies to *bona fide* claims, as well as to *bona fide* defence.

A decree properly obtained against a Karanavan in a suit in which he was defendant, has the same legal effect for purposes of *res judicata*, as a decree against him in a case in which he was plaintiff.

Section 26 [ = Or. I, r. 8 (1) ] of the Civil Procedure Regulation has no application to cases of Malabar Tarwads.—
**11 T. L. R.**, *112*.

Fol.—21 T. L. R., 127.
Dist.—1 T. L. J., 33.

**13.** Suit to set aside a hypothecation of an elephant by the Karanavan of a Tarwad, and the decree obtained thereon, on the grounds that the hypothecation was bad for want of consideration and that the decree in question was obtained during pendency of a suit to remove the Karanavan from his office. The defence contended that the question of consideration was *res judicata* by a decree in a suit brought by the Karanavan himself to set aside the hypothecation on the ground that it had no consideration.

*Held.*—The suit by the Karanavan having been brought as Karanavan and dismissed on the merits, the decree therein operated as *res judicata* on the question of consideration. The fact that if, instead of the Karanavan, his Anandaravan (present plaintiff) had brought the suit, the *onus probandi* would have been on the creditor and not on the debtor (the Karanavan), could not deprive the decree of its legal validity and character. The rules relating to *onus probandi* are rules of mere procedure and could not affect the principles of substantive law which determines the weight due to the regular adjudications of a Court of law.— **12 T. L. R.**, *87*.

Ref.—21 T. L. R., 41.

**14.** An order passed on the merits on a petition claiming any portion of attached property is conclusive unless it is disputed within one year by means of a regular suit.— **15 T. L. R.**, *63*.

**15.** A is the senior male member or *de jure* Karanavan of an Ezhava Tarwad. T and B are its junior members. R, the Karanavan of the said three persons, and T and B were sued by X for the redemption of a Tarwad mortgage. T and B contested the suit, although R died during its progress. The first Court gave a decree for X and it was confirmed both in the District and the High Courts. In none of these Courts was A, the successor of the deceased R, made a party. A, therefore, sued for a declaration to the effect that the decree thus obtained by T and B was not binding upon the Tarwad as himself, its legal representative, was not made a party to the suit after the death of R. The District Munsiff gave a decree for plaintiff, but on appeal, the District Judge reversed it on the ground of *res judicata* and holding that T and B as managers sufficiently represented the Tarwad in the previous suit.

*Held.*—As Karanavan alone can sue and be sued on behalf of the Tarwad, the Tarwad was not properly represented in the previous suit.

When a junior member joins with the Karanavan in the execution of documents, the natural inference is that he was acting in subordination to the Karanavan and not by way of supersession.

The mere execution of documents legally by a Seshakaran cannot make him a *de facto* Karanavan :

The conduct of suits on behalf of the Tarwad by a junior member will not give him a right to ignore the existence of the Karanavan:

It is only when a party dies after argument and before decree that his death will affect the validity of the decree.

As the Karanavan was not made a party to the previous suit and as he cannot be said to be claiming under or through a Seshakaran according to the spirit of Explanation V of Section 9 of the Civil Procedure Code, the bar of *res judicata* does not apply to the case.— **17 T. L. R.**, *18.*

Ref.—31 T. L. R., 104.
19 T. L. J., 1.
Dist.—2 T. L. J., 63.

**16.** Junior members of a Marumakkathayam Tarwad are, in the absence of fraud, bound by a decree obtained against a Karanavan and manager of the Tarwad, and they should be treated as parties to the decree-execution and not as strangers.

Where a decree has been obtained by fraud practised upon the opposite party by which he was prevented from placing his case before the tribunal which was called upon to adjudicate upon it in the way most to his advantage, then the decree may be set aside; but a simple allegation that a decree is wrong or that the suit or defence was not conducted with due care or diligence or that the evidence adduced was conflicting and unsatisfactory or that there was other available evidence which, if tendered, would have turned the scales in one's favour cannot be acted upon.— **18 T. L. R.**, *20.*

Ex.—19 T. L. R., 208.
Ref.—24 T. L. R., 169.
Fol.—2 T. L. J., 475.
Dist.—2 S. D., 141.
Not fol.—16 T. L. J., 550.

**17.** Orders in execution proceedings not appealed from are binding on the parties thereto in all subsequent proceedings on principles analogous to those of *res judicata.* **K. P.**, *281.*

**18.** It is a recognised principle of law that a purchaser at Court sale represents the judgment-debtor to the extent of th right, title and interest he had in the pro perty purchased at the date of the sal This privity of interest is enough to creat against the auction-purchaser the same ba by *res judicata* that would apply to th judgment-debtor under whom he clain (F. B.).— **3 S. D.**, *6.*

**19.** The suit was to set aside an Otti an Kuzhikanom mortgage executed by defend ants Nos. 6 to 8 to defendants Nos. 1 to on the ground of want of good and vali consideration. The contention was tha defendants 1 to 5 as the mortgagees of de fendants 6 to 8 should be bound by prior judgment against the latter. Th plaintiffs claimed to be members of th Tarwad of the defendants.

*Held.*—After a mortgage has been dul created, the mortgagor in whom the equit of redemption is vested no longer possesse any such estate as would entitle him to re present the mortgagee in a subsequent sui so as to render that decision binding upo and conclusive against such mortgagee. De fendants 1 to 5 cannot claim under defend ants 6 to 8 within the meaning of Section 9 C. P. C. That Section has been interpreted as if after the words "under whom they or any of them claim," the words "by a title arising subsequently to the commencement of the former suit" had been inserted (F. B.) **4 S. D.**, *169*

**20.** A sued B for setting aside an alienation. A died during the course of the suit. C and D two rival claimants came forward each claiming to be brought on record as the heir of A. The Munsiff before whom the suit was pending passed an order under Section 351, C. P. C., [=Or. XXII, r. 5], in favour of C. Subsequently C brought a suit against D for recovery of some property which belonged to A and which D had taken possession of after A's death, alleging that he and not D was the heir of A. The Munsiff on the strength of the former summary order, decreed the suit, holding that D was not the heir of A,

*Held.*—The order passed under Section 351, C. P. C., in the former suit cannot operate as *res judicata* in the subsequent suit.

"There is no rule of universal application that an order in any proceeding between two litigants debars the trial of the same question between the same parties in a subsequent proceeding, no matter what the scope of the subsequent litigation may be and no matter what were the circumstances in which it might have been commenced. If we were to lay down any such comprehensive rule of law, we should obviously assume the functions of the Legislature."

A summary investigation under Section 351 C. P. C., cannot be as full and as searching as an investigation in a regular suit.—
**25 T. L. R.**, *54*.

Fol.—28 T. L. R., 229
(=3 T. L. J., 191).

[Note the change in Rule 5 of Order XXII corresponding to Section 351.]

**21.** Plaintiff, who obtained from the foreman of a Chitty an assignment of a bond executed by a prized subscriber (the predecessor in title of the defendants), sued to recover the arrears of subscriptions in respect of 14 instalments of the Chitty. The defendants contended, *inter alia*, that the suit was barred by Section 9, C. P. C., on the ground that, in a prior suit, to which the foreman and the defendants were parties (defendants), a decision was passed in favour of the then plaintiff, a non-prized subscriber, charging the decree amount on the moneys in the hands of the defendants and payable to the foreman.

*Held.*—The decision did not operate as *res judicata.*

*Per Hunt, J.*—In order to successfully raise the plea of *res judicata* between co-defendants, there must have been such an adjudication in the former suit as will be *res judicata* on the matter between the defendants themselves as effectually as between the plaintiffs and defendants in the former suit. There can be no *res judicata* betweeen co-defendants in a case where there has been no active controversy as between them.

*Per Ramachandra Row J.*—When any relief given to the plaintiff in a case involves or requires a decision regarding the rights *inter se* of the defendants, such decision must be held to operate as *res judicata* in all subsequent proceedings between the co-defendants.

Whether the decision of a point which was in active controversy between the co-defendants, but which was not necessary for the disposal of the plaintiff's case, would operate as *res judicata* between the co-defendants, will depend upon whether on the basis of such decision the judgment gave any relief to the defendants *inter se*; if it did, the decision might be *res judicata*: if otherwise, not.— **2 T. L. J.**, *6*.

Fol.—**2 T. L. J.**, *275*.

**22.** The plaintiffs obtained a mortgage deed from the defendant, the Karanavan of a Malabar Tarwad, for 1000 Fanams. The junior members of the Tarwad sued to set aside the deed, on the ground, *inter alia*, that the mortgage was not supported by consideration. They made the plaintiffs and the Karanavan, the mortgagor, as parties—defendants to the suit. The plaintiffs and the defendant (Karanavan) contended that the document was fully supported by consideration, but the Court found that the mortgage was wanting in consideration to the extent of 450 Fanams. The plaintiffs brought the present suit to recover the sum of 450 Fanams from the defendant. The defence was, *inter alia*, that the matter was *res judicata* by reason of the finding on the question of consideration in the suit brought by the Seshakars.

*Held.*—The matter was not *res judicata.*

In order to apply the principle of *res judicata* between co-defendants two conditions have to be satisfied:—(1) The finding on the disputed question in the subsequent suit

must have been necessary for the purpose of affording relief to the plaintiff in the former suit; and (2) there must have been a conflict of interests between the co-defendants themselves.

Under Explanation V to Section 9, Civil Procedure Code, a right to relief can be said to be "claimed in common" only as between parties who would be benefited by such relief if granted and who have such an interest in the relief obtained that they could join as co-plaintiffs under Section 22, [ = Or. I, rr. 1 & 4 ], Civil Procedure Code.— **27 T. L. R.**, *70* (= **2 T. L. J.**, *275*).

Ref.—15 T. L. J., 358.

**23.** The judgment in a former suit brought by a junior member of a Malabar Tarwad to set aside an alienation made by the Karanavan operates as *res judicata* to a second suit brought by another junior member for exactly the same relief.

*Per Muthunayagom Pillai, J.*—If the first suit was one instituted on behalf of the Tarwad and if the Karanavan of the Tarwad was a party to it as the accredited head of the family, Explanation V to Section 9 would bar a second suit. The fact that the plaintiff in the first suit was a junior member and not a Karanavan does not make any difference.

*Per Viraraghava Iyengar, J.*—In a litigation brought by a junior member or some junior members of the Tarwad for setting aside an alienation of Tarwad property and to which the Karanavan is a party, the Tarwad, notwithstanding that all the Tarwad junior members for the time being are not actually parties to the record must be taken to have been fully and properly represented and to have had an opportunity of vindicating its corporate rights against the alleged improper acts of its agent or representative, the Karanavan. The observations of Sadasiva Iyer, C. J., in the Case in II Thandu Iyer's Select Unreported Decisions, page 256 at 257, were referred to. The trend of the decisions of this Court has all along been in favour of the view that Exaplanation V, to Section 9, C. P. C., applies t Malabar Tarwads.— **31 T. L. R.**, *104*

Ref.—16 T. L. J., 207.
19 T. L. J., 241.

**24.** An order passed in execution of decree rejecting a petition praying for im pleading the legal representative of the de cree-holder is not a decree having the ef fect of *res judicata* in a subsequent suit.- **32 T. L. R.**, *13*

Ref.—17 T. L. J., 298.

**25.** The decree in a prior suit based o an oath agreement does not operate as *re judicata* as against persons who thoug parties to the prior suit are not parties t the oath agreement in terms of which th prior decree was passed.— **8 T. L. J.**, *120*

**26.** When a decree declaring a right t partition has not been given effect to by th parties proceeding to partition in accor dance with it, it is competent for them, o any of them, if they still continue to be in terested in the joint property, to bring an other suit for declaration of a right to a partition in case their right to partition i called in question at a time when, by reason of limitation or otherwise, they cannot pu into effect the decree first obtained. I this respect, suits for declaration of righ to partition differ from most other suits. S long as property is jointly held, so long does a right to partition continue.

Such a decree amounted to nothing more than an inchoate partition insufficient to change the character of the property which continues a joint estate until there has been an actual partition by metes and bounds or a division of title.— **9 T. L. J.**, *25*.

**27.** A benamidar can bring a suit in his own name without bringing on record the real owner who, though not a party to the litigation, is fully affected by the rules o *res judicata*. In such a suit it is open to the real owner to apply to be joined in the action.— **10 T. L. J.**, *338*.

**28.** Where the Karanavan in his representative capacity sues or is sued on behalf

of the Tarwad and a decree is made in such suit, the decree must, in the absence of invalidating circumstances and in the absence of statutory provisions to the contrary, bind the Tarwad, or enure for the benefit of the Tarwad as the case may be. The junior members are consequently constructive parties to such decree and to the execution proceedings following it (F. B.).—

**40 T. L. R.,** *151.*

Ref.—40 T. L. R., 212
( = 14 T. L. J., **341**).

**29.** A obtained a decree against B. B had also obtained a decree against A. The decree obtained by A was for a larger amount. C obtained a decree against B and attached the decree-debt due to B from A. C then applied to get himself impleaded as the decree-holder in the attached decree and to execute it. Notice was issued to A to show cause why the decree should not be executed after impleading C as the decree-holder. No objections having been received, the Court on 7-5-1098 passed an order:—"attaching decree-holder is allowed to execute the decree." Notice was again issued to A to show cause why the decree should not be executed against him. A, thereupon, produced the decree he had obtained against B in Court and objected to the execution of the decree obtained by B against him praying for satisfaction being entered of the smaller decree.

*Held* (accepting the objection of A).—The order of 7-5-1098 allowing execution did not operate as *res judicata.* The notice issued to A before that order was passed could be taken to have been issued only for the statement of objections, if any, to the impleading of the attaching creditor as the decree-holder. The issue of a second notice to A calling upon him to show cause why the decree should not be executed against him clearly supported that view.—

**17 T. L. J.,** *276.*

**30.** The plaint properties belonged to the second defendant's Brahmaswom and were held on Kanom by the first defendant. The first defendant hypothecated, and later on sold, the properties to the plaintiff. Subsequent to the hypothecation but before the sale, the second defendant had filed a suit against the first defendant for redemption of the properties and that suit was decreed in terms of the plaint. The plaintiff brought the present suit to recover the amount under the hypothecation from the plaint properties and the first defendant, alleging that the finding in the redemption suit that the first defendant had only a redeemable mortgage right over the properties could not bind him. It was accepted as common ground that the sale became infructuous by reason of the pendency of the redemption suit.

*Held.*—The finding in the redemption suit that the Kanom was a redeemable one cannot bind the plaintiff who had acquired a mortgage right in the properties before the date of that suit. The plaintiff could not be deemed to be a person claiming under the first defendant within the meaning of Section 9 of the Civil Procedure Code, corresponding to Section 10 of the Code of 1100.—

**43 T. L. R.,** *120*
( = **17 T. L. J.,** *458* ).

**31.** A mortgagee who purchases the equity of redemption in execution of a mortgage decree obtained against his mortgagor cannot, by such purchase, be deemed to be such representative of his mortgagor as to make a decision obtained against the latter to which the mortgagee is not a party, operate against him as *res judicata.*

The sale in execution of the decree obtained by the mortgagee should be deemed in law to be but an enforcement of the rights he already possessed under his mortgage. He cannot therefore be said to be claiming under his mortgagor so as to create a privity in estate under his judgment-debtor to justify the rule of *res judicata* being operative against him.— **43 T. L. R.,** *108*
( = **17 T. L. J.,** *593*).

III. **COMPETENT COURT.**

**1.** The decision of a Court, in a former suit, on the same cause of action, between the same parties, or between parties under whom they claim, is no bar to a subsequent suit, unless the Court, that decided the former suit was competent to try the subsequent suit.— **3 T. L. R.,** *60.*

**2.** The decision of a competent Court will operate as *res judicata* in a subsequent suit, if the parties, the subject-matter, the cause of action and the issues are substantially the same in both suits notwithstanding that the former decision may have been based on an erroneous view of the law or on a wrong assumption of facts, and that the title set up in the second suit may be different from that set up in the first.— **9 T. L. R.,** *92.*

Fol.—11 T. L. R., 112.
Diss.—41 T. L. R., 220
(=14 T. L. J., 520).

**3.** The fact of a decision being by an inferior Court would not preclude its being *res judicata* upon all points decided thereby, and raised in a subsequent suit filed in a superior Court, between the same parties and in respect of the same subject-matter, provided the inferior Court was competent to try the case at the time it recorded its decision. The fluctuations in the price of property and the consequent changes of pecuniary jurisdiction cannot be allowed to revive claims once finally adjudicated upon. —**11 T. L. R.,** *208.*

**4.** Where the District Judge held that a judgment passed in a certain suit by a Munsiff in respect of the question whether the parties were governed by the Marumakkathayam Law or the Makkathayam Hindu Law, estopped the defendant from setting up the Makkathayam Law:

*Held.*—Under Section 9 of the Civil Procedure Code, it is the judgment of a Court of equal or superior jurisdiction which has the effect of *res judicata*. The fact that there was a regular appeal to the Zillah Court and a special appeal to the Hig[h] Court does not alter the position of affairs.

The former suit was instituted in and de[-]cided by a Munsiff's Court. The subsequen[t] suit was instituted in the District Cour[t]. The Munsiff was not competent to try thi[s] suit. His judgment in the former sui[t] therefore, could not conclude the proceed[-]ings in the District Court.— **13 T. L. R.,** *15[?]*

**5.** Under Section 9, C. P. C., the issue decided in the former suit must, in orde[r] to be *res judicata* in the second suit, hav[e] been decided by a Court "competent to tr[y] such subsequent suit."

The criterion is not whether the Cou[rt] which passed the former judgment ha[d] jurisdiction over *that portion of the clai[m]* which is in dispute in the subsequent sui[t] but whether the former Court would hav[e] been competent to try *the subsequent su[it] itself.*— **3 S. D.** *22[?]*

**6.** There were two connected suits o[n] the file of the Krishnapuram Munsiff['s] Court. The material issues in the case were the same. The 1st case was decided i[n] the Krishnapuram Munsiff's Court, whic[h] recorded findings against the appellant and the decision was affirmed in appeal i[n] the Quilon District Court. The 2nd sui[t] which was also decided against the appel[-]lants, came up in regular appeal to th[e] High Court as the value of the suit wa[s] over Rs. 500. The respondent raised [a] preliminary objection that the High Cour[t] was concluded by the decision of the Dis[-]trict Court against the appellants in th[e] connected suit and against which no secon[d] appeal had been preferred.

*Held.*—The final decision of the Distri[ct] Court in appeal in the connected suit oper[-]ated as *res judicata* in the second suit.

"Serious anomalies and inconvenience would arise if we hold that a final adjudica[-]tion binding on the parties in one of tw[o] cross suits or connected suits is n[ot] binding on the parties in an appe[al]

from the decision in the other suit, simply because, for the sake of brevity and convenience, a single judgment is written by the first Court for both suits or on the ground that it does not look well for an Appellate Court to be bound by the decision of a lower Court in another suit" (4 M. L. T., 172).— **1 T. L. J.**, *49*.

**7.** For purposes of *res judicata*, it is the competency of the original Court which decided the former suit that must be looked to and not that of the Appellate Court which ultimately decided the suit on appeal. **19 T. L. J.**, *510*.

### IV. HEARD AND FINALLY DECIDED.

**1.** The dismissal of a suit for default to adduce evidence by the plaintiff, in which the defence was that the cause of action had not arisen and that the Court had no jurisdiction, cannot be a bar to a subsequent suit in the proper Court, when the cause of action actually arises.— **3 T. L. R.**, *39*.

**2.** The decision of a suit upon the oath of one of the litigating parties is not *res judicata* inasmuch as it is not an adjudication upon the merits. Its effect is simply the disposal of the former suit; but not *res judicata* upon future litigation.— **3 T. L. R.**, *56*.

Fol.—10 T. L. R., 60.
Diss.—32 T. L. R., 32
(=6 T. L. J., 126)

**3.** Only judgments, based upon evidence duly recorded on the issues raised, have the force of adjudication and *res judicata*.— **3 T. L. R.**, *59*.

**4.** When a suit is dismissed on a preliminary ground, the opinions expressed on the merits would not operate as *res judicata* against the maintenance of a second suit.

The findings in a judgment upon matters immaterial to the ground upon which a suit is finally disposed of, amount to no more than *obiter dicta* and do not constitute a final decision (7 All. 606). It has also been held in British India that when a suit is dismissed on a preliminary ground, the opinions expressed on other issues were not *res judicata* so as to bar the maintenance of a second suit. (3 Bom., 223 and 11 Cal., 544).— **8 T. L. R.**, *158*.

**5.** Two sisters having inherited from their father certain property subject to a mortgage, one of them (since deceased) sued the other and obtained a decree for partition as also for redemption of the whole property subject to her surrendering her sister's moiety on the latter's paying her share of the mortgage amount. This decree was allowed to become barred by lapse of time. Since the legal bar, the interests of the surviving sister were purchased by 2nd plaintiff who sued, under that right, to redeem the whole property, on payment of the whole debt.

*Held.*—The plaintiff was entitled to recover only a moiety of the property on payment of proportionate share of the debt and the claim to the share of the deceased sister was *res judicata* by reason of the prior decree granting redemption which had become time-barred.

The principle that a mortgage is indivisible, is intended for the protection of the mortgagee's interest, and is inapplicable to the case where it would, instead of helping the mortgagee, deprive him of what he had acquired a title to by lapse of time.— **9 T. L. R.**, *89*.

**6.** To apply the principle of *res judicata* the Court must be satisfied that there are three identities: (i) parties, (ii) property, and (iii) cause of action.

A judgment cannot be denied the force of *res judicata* because it expounded, and proceeded upon, erroneous views of law, provided there are the three identities.

No subsequent change in the law or in the opinions of its expounders, can revive rights once finally adjudicated upon.— **9 T. L. R.**, *139*.

Fol.—11 T. L. R., 112.
Ex.—21 T. L. R., 127.
Diss.—41 T. L. R., 220
(= 14 T. L. J., 520)
Dist.— 1 T. L. J., 38.

**7.** An order passed on a claim petition by the Court executing the decree has no force of *res judicata*. Its only effect is that, after the lapse of one year from the date of its passing, the parties to it cannot question its validity or legality as regards the particular property to which it relates.—

**10 T. L. R.,** *37.*

Fol.—18 T. L. R., 200.

**8.** A decree passed on special oath cannot be pleaded as *res judicata*.—

**10 T. L. R.,** *60.*

Diss.—32 T. L. R., 32
( =6 T. L. J., 126 ).

**9.** An order passed on a claim petition will bind and affect only parties thereto and the subject-matter thereof: the sole effect of such an order being simply to preclude the judgment-creditor from again attaching the property released from attachment thereby, without establishing its liability to be sold for the decree-debt, by a regular suit.

**10 T. L. R.,** *64.*

Fol.—18 T. L. R., 200.

**10.** A decree which does not grant a relief expressly prayed for would operate as *res judicata* against a subsequent suit asking for the same relief (F. B.).—

**11 T. L. R.,** *153.*

Dist.—16 T. L. R., 1.
Ref.— 1 S. D., 90.

**11.** No decree based on a compromise could operate as *res judicata* in a subsequent suit as such a decree is not an adjudication on the merits, on the disputed points, under Section 9 of the Civil Procedure Code.

The distinction between an estoppel by representation and *res judicata* is that "the latter prohibits the Court from entering into an enquiry at all as to a matter already adjudicated upon, whilst the former proh bits the party, after the enquiry has alrea been entered upon, from proving anythi which would contradict his own previo declarations or representations to the pr judice of another party, who has, relyi upon those declarations or representatior altered his position; in other words, *res j dicata* prohibits an enquiry *in limine* whil an estoppel is only a piece of evidence. "The plea of *res judicata* proceeds up the grounds of public policy properly called, whilst an estoppel is simply an a plication of equitable principles betwe man and man, two individual parties to litigation.

Sometimes, the representation of a par to a litigation, which representation pleaded as an estoppel in subsequent litig tions, might be untrue or false, and in suc a case, it would indeed be inequitable bind that party in all future litigations, l that representation, even as against oth party to the first litigation; more so, again the rest of the world. The effect of the r presentation should, in such cases, be limi ed to the extent of prohibiting the par making it from seeking, in a subsequent sui to invalidate what has been, on the strengt of it, done by the other party in respect the subject-matter of the litigation in th course of which that representation w made or which was determined in accor ance with that representation.—

**12 T. L. R.,** *16*

Dist.—18 T. L. R., 76.
Ref.— 14 T. L. J., 483.

**12.** A decision on the record under Se tion 135 of the Civil Procedure Regulatic II of 1037 has all the legal effects of an a judication on the merits for purposes *res judicata*. [ Section 135 referred to w as follows:—" If either party to a suit whom time may have been granted sha fail to produce his proofs, or to cause th attendance of his witnesses, or to perfor any other act for which time may ha been allowed, the Court shall proceed to

decision of the suit on the record, notwithstanding such default."].—12 T. L. R., *194*.

[ Section 135 of Regulation II of 1037 = Section 153 of Regulation II of 1065 = Order XVII, Rule 3, of Regulation VIII of 1100.]

Ref.—32 T. L. R., 32
( = 3 T. L. J., 126).

**13.** Where the various acts of misfeasance and malfeasance imputed to a Karanavan as grounds for his removal were found to have been done by him before the date of the compromise in a previous suit by which compromise the Seshakars agreed to condone such acts:

*Held.*—In a subsequent suit for the removal of the same Karanavan, the Seshakars could not be allowed to revert to the grounds which they once agreed to forego.—
**15 T. L. R.**, *21*.

**14.** It is only when the findings support the decree that the questions to which they refer can be said to have been "heard and determined" under Section 9 of the Civil Procedure Code, and the adjudication becomes *res judicata*. The natural inference regarding findings which are unconnected with the decretal order and, *a fortiori* those which are opposed to that order, is that they are immaterial and not necessary for the decision of the case and hence, cannot operate as *res judicata*.—
**17 T. L. R.**, *85*.

**15.** The plaint properties were the ancestral properties of five brothers inclusive of T and B and their brother X whose rights and interests were purchased by A in an auction. A sued T and B for recovery of the one-fifth share of X. T alone contested the suit. In a previous suit brought by B and in which A and T were also defendants, B's claim for an one-fifth share was allowed and T's objections thereto were overruled. The objections to X's claim to an one-fifth share now urged by T had been urged in that suit also. M again who was one of the remaining brothers recovered in another previous suit his one-fifth share notwithstanding T's objections. Under these circumstances, the District Judge and Munsiff were of opinion that T was barred by *res judicata*.

*Held.*—The view taken by the Courts below was correct.— **17 T. L. R.**, *122*.

**16.** A notice under Section 225 [ = Or. XXI, r. 14 ] of the Civil Procedure Code is not necessarily limited to an enquiry as to the *factum* of assignment alone. A question of limitation may also be enquired into and decided in an application under the said Section. A decree-debtor was served with notice to state whatever objections he had to the execution of a decree on the application of its assignee under the said Section. The decree-debtor defaulted to make his appearance and a question of limitation had to be decided against him in the enquiry as per notice.

*Held.*—The decree-debtor was estopped from re-opening the question of limitation.— **18 T. L. R.**, *1*.

Dist.—30 T. L. R., 171
( = 4 T. L. J., 408).
Ref.—15 T. L. J., 379.
17 T. L. J., 276.
Fol.—17 T. L. J., 538.

**17.** The bar of *res judicata* applies to a decree based on a compromise just as much as a decree obtained after the matter involved has been fought to the end.—
**18 T. L. R.**, *76*,

Ref.—14 T. L. J., 488.
Fol.—19 T. L. J., 743.

**18.** The order passed upon a claim petition showed that the claim was admitted by the plaintiff. The plaintiff's Vakil was present when the order was passed ; but neither notice of the claim was served on the plaintiff nor the admission referred to in the order of the lower Court was recorded. In a fresh suit which was instituted by the plaintiff within one year of the said order, it was contended that the so-called admission of the plaintiff had the force of *res judicata*.

*Held*.—The plaintiff was not preclnded from maintaining the fresh suit by reason of the existence of the said claim order.— **18 T. L. R.,** *200*.

**19.** The suit was for a declaration that the plaintiff and not defendant was entitled to spiritual supremacy over a church and for an injunction restraining the defendant from making further appointments of Kathanars to the church and preventing the present Kathanars from officiating therein. Holding *inter alia* that the suit was opposed to the principles of the provision of Section 42 of the Specific Relief Act inasmuch as it did not contain a prayer for consequential relief, the District Judge dismissed it.

*Held*.—Injunction in the case of improper interference with the performance of religious service is a consequential relief, the appropriateness of which will depend on the circumstances of each case and that, therefore, the suit is not contrary to the principles of Section 42 of the Specific Relief Act:

In the case of joint trustees of a religious institution, the possession of one is possession of all:

A compromise in a pending suit made by the contending parties as a provisional arrangement without causing any prejudice to their legal rights as may be finally decided in the suit will not operate as an estoppel as to title in a subsequent suit by the same parties:

A material issue which has been tried and determined between the same parties in a prior suit and in a competent Court as to the status of one of them in relation to another, cannot be tried in another suit between them, though the property, the subject-matter in the one suit, is not the same as in the other (F. B.). —**18 T. L. R.,** *222*.

Ref.—23 T. L. R., 171.
26 T. L. R., 148.
Fol.—K. P., 578.

**20.** A compromise decree made on t basis of an oath under Section 360, C. P. [= Or XXIII, r. 4] has the effect of r *judicata*.— **19 T. L. R.,** *2*

Fol.—32 T. L. R., 32
(=6 T. L. J., 126).
K. P., 453.
3 S. D., 226.

**21.** Plaintiffs who represented one bran of a Marumakkathayam Tarwad sued f redemption of their 1/8 share of proporti numbers 1 and 2 from defendants who we donees under a deed of gift by X anoth sharer and assignee of the mortgages ex cuted by plaintiff's Karanavan. Defendar admitted the claim to property No. with some modifications as to its exten but with regard to No. 2, they alleged previous mortgage of 970 which had t come barred. In a prior suit by anoth co-sharer against X, the latter's plea of t previous mortgage was found to be false.

*Held*.—The judgment in the prior s could not bar the defendants' contention mortgage in 970 as *res judicata* under Se tion 9. The plaintiff in that suit was n one under whom the plaintiffs in the pr sent suit claimed title. The Karanavan these plaintiffs was added as a supplemen al defendant in the prior suit, but he w *ex parte*, and therefore there was no acti contest as to titles between that Karanav and the party from whom the defendar claimed title. Hence the suit could not said to be heard and determined betwe parties under whom the parties in t present suit claimed, litigating under t same title, as required by Section 9.

Nevertheless the prior judgment w admissible as evidence in the subseque suit under Sections 11, 13 and 43 of t Evidence Act.— **20 T. L. R.,** *1*

Fol.—21 T. L. R., 183.

**22.** In a suit by the junior members of Ezhava Tarwad to set aside a hypoth cation bond and the decree based there

where the defendant (hypothecatee) contended that the debt having been contracted by the Karanavan and 2 senior Anandaravars in connection with an Abkari contract, the Tarwad properties were liable, that the suit having been brought 3 years after the date of the decree it was barred by limitation, that as the Karanavan and the senior Anandaravars were parties to the suit, the other members were in the eye of the law presumed to be parties and therefore though the defendants in the former suit were *ex parte*, the fresh suit was bad for *res judicata* and that plaintiffs could not bring a fresh suit to set aside the execution proceedings but could apply only by a petition under Section 288, Civil Procedure Code [new Section 40]:

*Held*.—(1) For a declaration of the Tarwad's title to immovable property free from liability to sale in execution of a decree, the limitation period is six years:

(2) An *ex parte* decree is *res judicata* against the parties and privies thereto till set aside:

(3) Even where the Karanavan was *ex parte* in the first suit, if he remained so, not on account of fraud or collusion or misconduct, the Tarwad must be bound by the decree;

(4) (*a*) Where there has been fraud or collusion or treachery on the Karanavan's part or (*b*) when the Court was cheated into believing that the case was fairly fought or the Tarwad was fairly represented when in point of fact it was not so or (*c*) where the Karanavan had not defended properly the former suit because the plaint debt being a personal debt of his, he could not very well himself defend the suit on behalf of the Tarwad though there was no fraud, collusion or treachery, the Tarwad ought to be given an opportunity in a fresh suit to prove that the debt did not exist or was not binding on it, in other words, that the suit was not barred by Section 9 or 238, C. P. C.

(5) In the case of the Ezhava caste which usually follows the profession of toddy drawing and toddy sales, Abkari contract could not be held to be a speculative business (F. B).— **21 T. L. R.,** ***41.***

Ref.—23 T. L. R., 41
23 T. L. R., 57.
24 T. L. R., 169.
24 T. L. R., 195.
31 T. L. R., 104.
16 T. L. J., 207.
Fol.—26 T. L. R., 44.
1 T. L. J., 13.
2 T. L. J., 435.
6 T. L. J., 16.
8 T. L. J., 477.
30 T. L. R., 224.
16 T. L. J., 550.
19 T. L. J., 322.

**23.** Where, in answer to a suit for the cancellation of an alienation made by the defendant in violation of an agreement deed and a consent decree obtained by the plaintiff against the defendant, it was contended that the decree was fraudulently suffered with the object of defeating creditors:

*Held*.—Under Section 9 of the C. P. C., defendant was estopped from raising the question of fraud in the present suit.

A consent decree is as binding on the parties to the proceeding as a decree after a continuous trial.— **22 T. L. R.,** ***255.***

**24.** A decision based on a finding arrived at on evidence taken on oath is as much *res judicata* between the parties as one based on evidence taken in the ordinary course.— **K. P.,** ***453.***

Fol.—32 T. L. R., 32
(= 6 T. L. J., 126).

**25.** In a suit against a benamidar and conducted by him *bona fide*, the presumption is that he conducted the suit, or defended it with the full authority of the beneficial owner, and any decision come to in such a suit is as much binding on the real owner as if it had been conducted by himself.— **1 S. D.,** ***264.***

**26.** If the order on a claim petition becomes final, that order prevents the party

aggrieved thereby from reopening the question as a defendant, the principle of *res judicata* applying to a defence as well as to a claim as plaintiff.

The bar of the prior order even on a point of limitation without going into the merits of the case would conclude quite as much as it would conclude the plaintiff.— **2 S. D.**, *55.*

**27.** In a suit for recovery of immovable property by a benamidar, in his own name, it must be presumed to have been instituted with the consent and approval of the real owner against whom any adverse decision on the title set up will take effect as *res judicata.*

The test is whether the beneficiary consented to the action of the benamidar, the *prima facie* presumption is that he did consent. But it is a rebuttable presumption (F. B.).— **2 S. D.**, *62.*

**28.** In a suit for recovery of arrears of Michavarom, the defendant failed to set up the plea of set off on account of overpayment and the suit was decreed in favour of the plaintiff.

In a subsequent suit by the same plaintiff against the same defendant for recovery of arrears of Michavarom, the defendant set up the plea of set off.

*Held.*—The plea of set off though not raised in the previous suit could be raised in a subsequent suit.

If in the prior suit, the defendant had pleaded a set-off of the excess payment under Section 106 of the C. P. C. [=Or. VIII, r. 6], and paid court-fees on the same, that would have enabled the Court "to pronounce a final judgment in the same suit, both on the original and the cross-claim" as provided in the last para of Section 106. The above phraseology indicates that, in the absence of such plea of set-off, the finding in the judgment would not be final as to the excess amount of the counter-claim.

Again, in order to bar a second trial of an issue under Section 9, the matter must have been "directly and substantially in issue" in the prior suit and it must have been therein "heard and finally determined". In the subsequent suit, the payment made by the defendant up to the amount of arrears claimed in the prior suit was, no doubt, a matter directly in issue therein, because, if it was found true, the plaintiff would not have been entitled to any part of the arrears then claimed. The question of payment to any extent beyond that would not have been a point in issue there, unless the Court was seised of jurisdiction to enter into it by a plea of set-off raised by defendant under Section 106 which he did not do.

"It appears to be generally agreed upon that a fact cannot be in issue directly when the judgment can be correct, whether that fact exists or not". "A judgment is only conclusive on the matters which are directly in issue and not those which are brought incidentally into controversy during a trial. Ordinarily the pleadings in a suit constitute, make, define and limit the matters in issue. If under the pleadings in the former action, the plaintiff could not obtain the judgment on the note if introduced in evidence and the proof entitled him thereto, it would seem necessarily to follow that no judgment could be rendered which would bar his right of action thereafter". The question of overpayment in the prior suit was not, therefore, *res judicata.*— **2 S. D.**, *105.*

**29.** A consent judgment or *ex parte* judgment is as much *res judicata* as a contested judgment.

Estoppel by judgment is not confined to the judgment but extends to all the facts involved in it as a necessary step or as the ground work upon which it must have been founded.— **3 S. D.**, *195.*

**30.** The dismissal of a suit under Section 355, C. P. C., [ = Or. XXII, r. 9] has all the effects of *res judicata.*— **3 S. D.**, *215.*

**31.** A finding in a previous suit to constitute *res judicata* in a subsequent suit must be definite.— **3 S. D.**, *218.*

**32.** Judgments passed on oath have the effect of *res judicata.*

"It has always been the law that a judgment by consent or by default raises an estoppel just in the same way as a judgment after the Court has exercised a judicial discretion in the matter. The basis of the estoppel is that when parties have litigated a matter, it is in the interest of the State that litigation should come to an end; and if they agree upon a result, or upon a verdict, or upon a judgment, or upon a verdict and judgment, as the case may be, an estoppel is raised as to all matters in respect of which an estoppel would have been raised by judgment, if the case had been fought out to the bitter end." "The truth is a judgment by consent is intended to put a stop to litigation between the parties, just as much as a judgment which results from the decision of the Court after the matter has been fought out to the end, and I think it would be very mischievous if one were not given a fair and reasonable interpretation to such judgment and were to allow questions that were really involved in the action to be fought over again in a subsequent action."— **3 S. D.**, *226.*

**33.** The plaintiff, as real owner of certain properties, sued to redeem a mortgage of the same granted by his father in 1062. One L. to whom the plaintiff and the deceased brother had executed a benami sale, had twice sued for redemption of the same mortgage, but without success. The defence in the plaintiff's suit was *res judicata.*

*Held.*—The suit was barred under Section 9, C. P. C., by reason of the decision in the suit brought by plaintiff's benamidar.

*Per curiam.*—It is a well-recognised principle of law that when a benamidar institutes a suit for recovery of possession of property standing in his name, there is a presumption, which may be rebutted, that he has instituted the suit with the full authority of the beneficial owner.

There was not even an allegation in the plaint that the suits by L. were instituted without his knowledge, consent or approval; nor was there any evidence adduced to rebut the presumption. The plaintiff must, in the circumstances, be held to have stood by and permitted L. to sue for recovery of plaint property. He was, therefore, bound by the decree in the former suit, and could not recover on his secret title.

When a suit for redemption of a mortgage is dismissed, a subsequent suit for redemption of the same mortgage based on title could not be sustained, as the bases of both the suits were the same, *viz.*, ownership of the equity of redemption, and the relief claimed were identical, *viz.*, redemption of the self-same mortgage.— **2 T. L. J.**, *138.*

**34.** A judgment-debtor, having once allowed execution to proceed actively without the slightest objection and having applied for and obtained time to pay up the decree-amount, is estopped from contending that the decree is incapable of execution against him.— **27 T. L. R.**, *128* (=**2 T. L. J.**, *310*).

Ref.—9 T. L. J., 58.

**35.** In a suit between A and B, A died after filing a special appeal and C applied to the High Court to be made the legal representative of the deceased. B denied C's right to represent A, and on a special issue remitted by the High Court, the lower Courts concurrently found in favour of C and the High Court, on the strength of this finding, brought C on record and allowed him to prosecute the special appeal.

*Held.*—Such an order did not operate as *res judicata* in a subsequent suit where the question as to who was the heir of A arose for decision.— **28 T. L. R.**, *229* (= **3 T. L. J.**, *191*).

**36.** An order refusing to file an award under Section 504, Civil Procedure Code,

[=Or. XXXIX, r. 20], is analogous to an order rejecting a plaint under Clause (*c*) of Section 50, Civil Procedure Code, [=Or. VII, r. 11], and cannot, therefore, operate as a bar to a subsequent suit based on the award (F. B.).— **29 T. L. R.**, *63*.

Ref.—43 T. L. R., 157
( = 17 T. L. J., 629 ).

**37.** The Dewan of Travancore sued to recover a sum of money due from the defendant to the Sri Padmanabha Swami Temple. The defendant contended, *inter alia*, that the Dewan of Travancore was not competent to sue on behalf of the Temple and he did not owe all the money sued for. The first Court decreed the plaintiff's suit *in toto*. The defendant appealed only with regard to the sum of money not admitted by him to be due and raised objection regarding the competency of the Dewan of Travancore to sue.

*Held.*—The competency of the Dewan to sue having been accepted by the defendant in relation to the sum adjudged by the decree and not questioned in appeal, the finding became final between the parties and could not be re-opened (F. B.).

*Per Krishnan Pandalai, J.*—On the question of the plaintiff's right to sue, reference may be made to the decision in 28 Mad., 229, where it was observed that where in an appeal the conclusion of the Appellate Court with reference to matters properly arising before it is such as to render any portion of the decree of the lower Court not made the subject of appeal inconsistent with such conclusion, it would be not only anomalous to leave such portion of the decree in force while setting aside only so much of it as was comprised in the appeal, but it might also involve a breach of the rules as to *res judicata*. If the Appellate Court should find the claim barred by limitation, it could not for that reason reverse the decree to the extent it has been appealed against, as the unappealed portion is based on the view that there is no bar of limitation, and that view is final between the same parties. The only consistent course is in such cases to dismiss the appeal or reverse the whole decree. The ground that the plaintiff is not competent to sue is like the defence of limitation one that goes to the root of the claim and cannot be allowed to prevail in this case, as the defendant has not appealed against two-thirds of the decree which the plaintiff has got on the same bond.— **5 T. L. J.**, *48*.

**38.** The Karanavan of the plaintiff and others sued to set aside two alienations made by two persons in favour of the 1st defendant's Karanavan and the second defendant on the ground that they and the alienors were members of the same Tarwad and that the alienations were unsupported by consideration and Tarwad necessity. The plaintiff was also made a defendant to the suit and he remained *ex parte*. The alienees denied, *inter alia*, that the plaintiff's Karanavan and others as well as the plaintiffs were not members of the alienor's Tarwad, and were not therefore competent to question the alienations. The suit ended in a compromise by which the plaintiff's Karanavan and others who had sued were held not to be members of the alienor's Tarwad, and the validity of the alienations was affirmed. The plaintiff was not a party to the compromise which dealt with matters outside the dispute in the suit. The plaintiff now sued to set aside the alienations formerly in question as well as a sale subsequently given on the grounds, *inter alia*, that he and the alienors as well as his Karanavan were members of the alienor's Tarwad, that the alienations were not valid, that the decree in the prior case having dealt with matters outside suit was invalid, and that he was not bound by the decree.

*Held.*—A compromise entered into by a Karanavan in his representative capacity as Karanavan and embodied in a decree is binding on all the members of his Tarwad, except where it is proved to have been obtained by fraud. That what he did was

prejudicial to the Tarwad may be a ground for getting the compromise set aside, but is insufficient to warrant the inference that he did not act on behalf of the Tarwad in entering into the compromise.

All terms which form the consideration for the adjustment of the matter in dispute in the suit, whether they form part of the subject matter of the suit or not, do become related to the suit and can be embodied in the decree.

The principle of *res judicata* applies to the trial of suits as well as of issues.—

**31 T. L. R.**, *155*
(= **5 T. L. J.**, *336*).

Rel.—10 T. L. J., 22.
Ref.—14 T. L. J., 438.

**39.** Certain properties of a Malabar Tarwad were sold to defendant who was directed by the deed of sale to pay a certain debt of the Tarwad. The defendant failing to pay the debt, the Tarwad paid the same. Two suits, one by the Karanavan and the other by certain junior members (in which the Karanavan was a party, defendant) were brought for the recovery of the amount. The defendant pleaded limitation. The Munsiff upheld the defence plea and dismissed both suits as barred by limitation under Article 91. The Karanavan appealed to the District Court against the decree in his suit. The District Judge dismissed the appeal holding that the suit was barred but under Article 96 and not under Article 91. In second appeal by the Karanavan a preliminary objection was raised by the respondent that the decree in the other suit not having been appealed against that decision operated as *res judicata* in the case under appeal.

*Held.*—There was no *res judicata*. It was not possible for the appellant to have appealed against a decree dismissing the suit in which he was but a defendant and it was meaningless to say that simply because he (the Karanavan) did not do what was not possible for him to do, he is precluded from maintaining an appeal which he is otherwise entitled to maintain.—

**31 T. L. R.**, *228*
(= **5 T. L. J.**, *451*).

**40.** The plaintiff brought a suit for recovery of property leased. The Court expressed its findings on the issues raised and gave the plaintiff a decree, which, however, contained a direction that in default of payment by the plaintiff of the additional court fees found due within a specified time, the suit would stand dismissed. The plaintiff defaulted to pay the additional court fees and the suit was accordingly dismissed. The plaintiff brought the present suit for the same relief. It was contended by the defendant that the decree in the prior suit operated as *res judicata*.

*Held.*—The dismissal of the prior suit for the plaintiff's default to pay additional court fees should be viewed only as an order rejecting the plaint under Section 50, C. P. C., [ = Or. VII, r. 11 ] and therefore, did not operate as *res judicata*.—

**32 T. L. R.**, *15*.

**41.** Appellants obtained a decree against Z on 10-8-1073. On 18-8-1080, they applied for execution, but the notice to judgment-debtor was returned unserved as he was dead. On 7-6-1080, appellants applied to implead respondent as legal representative and the application was granted and respondent impleaded on 27-6-1080. On 2-12-1080, appellants applied for attachment of the property in dispute, and on 12-12-1080 the attachment was laid. The application was struck off on 19-2-1081 for default of prosecution. The next application was made on 20-7-1083, and on notice being given to respondent, the latter objected on 21-1-1084 to the attachment on the ground that the debt was not a Tarwad debt and Tarwad property was therefore not liable for same. The execution Court upheld the contention and raised the attachment. On appeal, it was contended for the appellants that as the property had been duly attached with the respondent on record and after notice

to him, the question of the liability of the property for attachment for the satisfaction of the decree was *res judicata* and could not be allowed to be re-opened.

*Held* (overruling the contention).—The respondent cannot be said to have had notice that the decree-holders were claiming to execute their decree against the property in dispute and to have had an opportunity of disputing such a claim. The order, therefore, made by the Court for attachment could not in justice conclude the respondent.

There can be no doubt that an adjudication passed in the course of execution of a decree will be binding on the party against whom it is made and may not, unless and until it is reversed in due course of law, be re-opened or collaterally impeached by him at any subsequent stage of the same proceedings, and this, on a principle analogous to that enunciated in Section 9 of the Civil Procedure Code. "If the question of the judgment-debtor's personal liability, or of the liability of his property generally to execution of the decree had really been determined by an adjudication in the course of the execution proceedings, that determination, so long as it stood unreversed, would, no doubt, be binding on the parties, whether the term *res judicata* properly applied to it or not." (11 Bom., 537). But this rule is subject to important qualifications, one of which is that the decision, in order to be so binding and operative, must have been arrived at after notice to the party against whom it is sought to be pleaded, intimating to him the nature of the claim which is made against him and which he is called upon to answer.

A determination come to without the said preliminaries could not conclude the party against whom it has been made.

An order, *prima facie* only of an executive character, could not possibly have the effect of *res judicata* unless the judgment-debtor, being called on to dispute, if he wished or if he could, a certain proposition of right and consequential demand of relief or action by the judgment-creditor, had then either failed in his contention to the contrary, or, at any rate, allowed the judgment to go by default.

"When it is endeavoured to obtain in execution something not granted by the decree, mere notice to the defendant that further execution is to be applied for, will not be sufficient to make the order *res judicata* against him. And where the application is not for the execution of something which has been directed to be done by any decree or order so as *ipso facto* to carry information as to what the claim made and the relief prayed for are, notice to the judgment-debtor without inserting the specific prayers will not render the order made upon such application *res judicata*."

The rule of *res judicata*, when applied to adjudications in execution proceedings must be qualified in the manner stated above, if it is to serve as a rule of justice, equity and good conscience.—

**32 T. L. R.**, *6*
(=**6 T. L. J.**, *43*).
Ref.—17 T. L. J., 276.
Affr.—18 T. L. J., 485.

**42.** Suit to set aside an assignment of mortgage executed by 2nd and 3rd defendants setting themselves up as heirs of one deceased N, the mortgagee. Plaintiff denied the heirship of defendants 2 and 3 and their competency to execute the assignment. Fourth defendant, plaintiff's Karanavan, had sued to set aside the same assignment but the suit ended in a collusive compromise between the parties in favour of the defendants 2 and 3. Defendants 2 and 3 in the present suit contended that the compromise decree operated as *res judicata*, and that the plaintiff cannot collaterally impeach that decree he having failed to set it aside within three years within knowledge of fraud under Article 77 of the Limitation Regulation.

*Held.*—The plaintiff's suit was not barred by *res judicata* and plaintiff without directly setting aside the compromise decree could collaterally impeach it by showing it was the result of collusion between the parties thereto and adverse to the interests of the Tarwad.

A party to a collusive decree is bound by it as there could be no fraud against him. Such a party cannot generally be allowed to callaterally impeach the decree if the period of limitation prescribed for a suit to set it aside has expired, yet one who is represented in a suit by the party actually on record may collaterally impeach the decree passed therein if it is the result of collusion between the actual parties and may treat it as a nullity without taking proceedings to set it aside.

"To create an estoppel by judgment it is essentially necessary that there be a genuine and honest judgment. It must not be merely collusive or simulated. A judgment or sentence, we are told, is a judicial determination of a cause agitated between real parties, upon which a real interest has been settled. In order to make a sentence, there must be a real interest, a real argument, a real presentation, a real defence, a real decision. Of all these requisites, not one takes place in the case of a fraudulent and collusive suit. There is no judge; but a person invested with the ensigns of a judicial office is misemployed in listening to a fictitious cause proposed to him; there is no party litigating, there is no party defendant, no real interest brought into operation."

"A collusive suit is not a real judgment, but something obtained by fraud from the Court which is not binding."

"Even if, without any fault or neglect of one party, his adversary succeeded by fraud in obtaining an unjust or unauthorised judgment, he must, through some prescribed mode, reverse or annul the judgment before he can claim to treat it as invalid. But it is necessary to distinguish between judgments entered by the collusion or fraud of both parties and such as are obtained by the fraud of the plaintiff. The former are void as to creditors only, not against the defendant, and may be attacked in any collateral proceedings by them, whilst the latter can be attacked by the defendant alone, directly, and in the proper Court."

"A judgment obtained by fraud or collusion, even, it seems, a judgment of the House of Lords may be treated as a nullity."

"A judgment or decree obtained by fraud upon a Court binds not such Court, nor any other Court, and its nullity upon this ground, though it has not been set aside or reversed, may be alleged in a collateral proceeding."— **32 T. L. R.,** *25*
**( = 6 T.L.J.,** *133* **).**

Ref.—19 T. L. J., 241.

**43.** Suit for declaration of title to and recovery of possession of property brought by a junior member of a Marumakkathayam Tarwad against certain other members of a divided branch of the same Tarwad. The Karanavan of plaintiff had previously instituted a suit against the same defendants for the same relief. During the course of that suit the Karanavan, the then plaintiff, and the defendants had entered into an agreement to settle the matter by oath, whereby the then plaintiff was to have taken the oath, and it also provided that if either party defaulted to perform his part of the agreement, the suit may be decreed against him. The plaintiff in the prior suit defaulted to take the oath, and the Court dismissed the suit. It was contended for the defence in the present suit that the former decision operated as *res judicata*.

For the plaintiff it was contended that the decision did not operate as *res judicata*, its effect being merely that of an order dismissing a suit for default of appearance.

*Held.*—The plaintiff's suit was barred by *res judicata*.

The decision of the Court dismissing the prior suit on failure of the present plaintiff's Karanavan to take the oath as agreed to by him in that suit, was as much a decision on the merits against the then plaintiff, as a decision of the Court allowing his suit in terms of the oath agreement if the oath had been taken would have been. It was a decision on the records as they then stood before the Court similar to a decision passed by a Court under Section 153 [ = Or. XVII, r. 3] of the C. P. C., and as in the case of a decision passed under Section 153, it had all the legal effects of an adjudication on the merits for purposes of *res judicata.*

A decision based on an oath which had been taken by one of the parties to an oath agreement has the effect of *res judicata.*—

**32 T. L. R.**, *32*
(=**6 T. L. J.**, *126*).

**44.** Suit for redemption. There was a prior decree for redemption passed in a suit brought by one M who was a second mortgagee from defendants 2 to 9, who were the Jenmis of the plaint property, against the 1st defendant who was the original mortgagee. This decree had become barred at the time of the suit of the plaintiff. The first defendant, original mortgagee, contended in the present suit that as the right to redeem had been once exercised, no second suit on the same cause of action could be brought.

*Held.*—The prior decree did not operate as *res judicata* since in the prior case no decree was passed in favour of the mortgagors.— **7 T. L. J.**, *439.*

**45.** The plea of *res judicata* has to be substantiated by the party who sets it up.

The decree in a prior suit based on an oath agreement does not operate as *res judicata* as against persons who, though parties to the prior suit, are not parties to oath agreement in terms of which the prior decree was passed.

So far as the parties to an oath agreement are concerned, a decree based thereon will operate as *res judicata* in subsequent su relating to the same subject matter.—

**8 T. L. J.**, *12*

**46.** In proceedings under the Lan Acquisition Regulation the special Offic made an award that two-thirds of the com pensation amount should be paid to defen ants 1 and 2 and the balance to the thir defendant. The third defendant contende that defendants 1 and 2 were not entitled t any portion of the compensation money a according to him defendants 1 and 2 wer utter strangers to the Tarwad of the secon defendant. The special Officer made a reference to the District Court. The plain tiffs, junior members of the second defend ant's Tarwad, sued for a declaration tha defendants 1 and 2 were not entitled to an portion of the compensation money on the same grounds as were mentioned by the third defendant in his application before the Special Officer. Defendants 1 and 2 contended that the adjudication under the Land Acquisition Regulation concluded the parties and that it operated as *res judicata* to the suit filed by the plaintiffs.

*Held.*—(1) Where a case had been decided by the special Court in respect of matters arising under the Land Acquisition Regulation, it could not be made the subject-matter of fresh proceedings in the ordinary course.

When statutory rights and liabilities have been created and jurisdiction has been conferred upon a special Court for the investigation of matters which may possibly be in controversy, such jurisdiction is exclusive and cannot concurrently be exercised by the ordinary Courts. If the objection relates to the person to whom the compensation is payable or to its apportionment amongst the persons interested, the matter may be investigated either upon a reference to the Court of the special Judge or by a suit in the ordinary Courts, and although either of these two methods are available, the claimant, if he has made his choice and selected his remedy, cannot, because he

has failed in the course adopted, fall back upon the other (2 Cal., 388).

(2) In order that the decision by the special Court may be binding on the Seshakars, who sue on the same cause of action as was decided in the prior proceedings, it must appear that the Tarwad was properly represented in the prior proceedings.—

**8 T. L. J.,** *477.*

**47.** Where the parties to a suit enter into a compromise consisting of terms which partly relate to matters lying outside the scope of the controversy as disclosed by their allegations and counter-allegations, such compromise, if submitted to the Judge for consideration and incorporation if deemed appropriate in the decree, does not require registration, whether all its terms are so incorporated or whether they are merely referred to in the decree (F. B).—

**10 T. L. J.,** *22.*

**48.** There is abundant authority for the proposition that a mere opinion on an abstract question of law does not *per se* operate as *res judicata.* But where an erroneous opinion on a point of law is applied by a Court of competent jurisdiction to the concrete facts of a case and a decision is consequently given in favour of or adversely to a particular party, the doctrine of *res judicata* can be invoked in a subsequent suit based on the same cause of action between the same parties or their privies.

Where a promissory note stamped according to the law of Cochin and sued on in a Travancore Court without affixing a Travancore one anna stamp was held inadmissible in evidence, and the suit based thereon was dismissed, and where a second suit was brought on the same note with a Travancore one anna stamp affixed.

*Held.*—The decree in the first suit operated as *res judicata* on the second suit.

*Quaere.*—Whether the refusal of the Court to receive the note in evidence on the ground that the note, though stamped according to foreign law, was unstamped according to Travancore law, was erroneous in law.— **38 T. L. R.,** *186,*

(=**12 T. L. J.,** *189*).

**49.** When the legal representative of a deceased judgment-debtor fails to object in execution proceeding that the properties proceeded with are not liable for the decree debt, he will be barred from raising the question at a later date.

An order to sell is an implied decision by the execution Court that the decree is enforceable against such properties.

To operate as a bar, the order in execution must have been passed after notice, sufficient to give information of the nature of the relief sought in the execution application.

An order passed in execution in the presence of the party affected by it is *res judicata* and he cannot impeach it except in one of the modes provided by law.

"One principle seems to be clear and that is, that the party who is sought to be affected by the bar of *res judicata* should have notice of the point which is likely to be decided against him and should have an opportunity of putting forward his contention against such a decision.—

**13 T. L. J.,** *349.*

Ref.—17 T. L. J., 125.
Rel.—18 T. L. J., 880.

**50.** Where one of the respondents to an appeal dies during the pendency thereof and the appeal abates so far as that respondent is concerned by reason of no one being brought on record in that place,

the decision of the lower Court does not become final nor does it operate as *res judicata* as regards the other respondents.

Section 9 or the principle of *res judicata* of which the Section is held to be an imperfect embodiment is not applicable. To invoke this principle, there must be a final determination of the question that is subsequently raised. There is no such final determination here as the decision of the

District Munsiff was deprived of its finality when an appeal was preferred. On the filing of the appeal, the judgment ceases to be operative as *res judicata.*

The abatement of the appeal by the death of one of the respondents cannot affect the prosecution of the appeal against the other respondents when the right of appeal survives against them.— **14 T. L. J.** *267.*

Ex.—42 T. L. R., 231.

**51.** A judgment by consent can operate as *res judicata.*

In order that a decree based on a compromise may operate as *res judicata,* the terms of the compromise have to be embodied in the decree or made the basis of such decree.— **14 T. L. J.,** *488.*

**52.** Where the former decree is necessarily based on a finding as to some matter directly and substantially in issue between the parties, such finding operates as *res judicata* in a subsequent suit. But where the decision is come to in spite of any finding or independently of any finding on matters in issue, the doctrine of bar by *res judicata* cannot be invoked. The question whether an issue was substantially raised and decided is a matter of fact to be determined upon the circumstances of each particular case.

A matter is not 'finally decided' unless the decision is followed by any result particularly appropriate to itself and where a finding is followed by a result which would equally follow from something essentially different, that finding cannot be deemed to be a final decision.—**40 T. L. R.,** *222* (=**15 T. L. J.,** *258*).

**53.** The plaintiff, a junior member of a Malabar Tarwad, of which the 2nd defendant was the Karanavan, sued for cancellation of a Melotti executed by 2nd defendant in favour of the 1st defendant.

The 1st defendant had filed a former suit on the strength of his Melotti for redemption of the first mortgage and the parties to that suit were the present 4th defendant who was the first mortgagee and the 2nd defendant the Karanavan of the Tarwad. The present 4th defendant, as the junior member-mortgagee in possession of the mortgaged property resisted redemption in that suit on the ground of absence of consideration and Tarwad necessity for the Melotti, but the Court found against these contentions and decreed redemption.

On the question whether the decision in the prior suit would operate as *res judicata*:

*Held.*—Such prior decision operates as *res judicata.*

The junior member-mortgagee in the first suit occupied two capacities, one that of the mortgagee merely, and the other, that of a component part of the Tarwad. It was in his former capacity that his interests were opposed to those of the Tarwad, his mortgagor. But it was not as mortgagee merely that he was allowed to put the Melottidar to the proof of the validity as against the Tarwad, of the Melotti granted by the Karanavan; for if he were a stranger to the Tarwad, it would not be open to him to question the right of a person who has obtained a Melotti from the Karanavan to redeem him even though no consideration may have been paid under the Melotti. Then it was in his capacity as a member of the Tarwad that he was allowed to put the Melottidar, to the proof of the validity of the Melotti. The right so conceded to such junior member is the same as the right that he or any other junior member has as plaintiff, in a suit filed for the cancellation of the Melotti. If, in the latter case, the junior member represents the Tarwad, it does not stand to reason why the junior member—defendant in suits like the one under consideration, does not represent the Tarwad.— **16 T. L. J.,** *207.*

**54.** The puisne mortgagee had brought a suit to enforce his mortgage making the prior mortgagee a party. In that suit the puisne mortgagee had not attacked the validity or priority of the prior mortgage and

the prior mortgagee had not appeared to defend his mortgage. In the present suit by the assignee of the prior mortgagee to enforce his mortgage against the puisne mortgagee, the latter contended that the prior mortgage might and ought to have been made a ground of defence in the former suit and that by the omission to do so, the present suit was barred as *res judicata.*

*Held.*--Under the circumstances, the case came within the terms of Section 96 of the Transfer of Property Act and the property could only be sold as therein provided with the consent of the prior mortgagee who had a paramount claim outside the controversy of the suit unless the mortgage was impugned, and, therefore, to sustain the plea of *res judicata* it was incumbent on the puisne mortgagee to show that he sought in the former suit to dispute the title of the prior mortgagee and postpone it to his own, and that had not been done. The puisne mortgagee, therefore, had failed to establish the conditions essential to his plea.—
**16 T. L. J.**, *244.*

**55.** The members of a Marumakkathayam Tarwad can be allowed to impeach documents executed by other members, even though the latter failed to do so in a former suit based on such documents. The latter suit cannot operate as *res judicata.*

The plea of *res judicata* was, in the case, not raised in the lower Court. The plea has to be treated as a ground which the defendant is bound to set up in answer to the plaint claim within the meaning of Section 9, Explanation II, of the Civil Procedure Code of 1065.— **16 T. L. J.**, *550.*

**56.** Interlocutory orders are as binding on parties as a final judgment. The binding nature of such decisions is based upon general principles of law and not upon any statutory provision, as otherwise there would be no end to litigation. Even as regards interlocutory orders, the validity of an order made at one stage of a litigation unless forthwith challenged by an appropriate proceeding in a superior tribunal is conclusive between the parties and cannot be questioned or collaterally attacked at a later stage. Orders upon applications for amendment of decrees have been held to be final if heard and disposed of on merits. A later application of the same scope and character has been treated as being barred. On general principles therefore, such orders are conclusive unless vacated by appropriate proceedings allowed by law. Though Section 10 of the C. P. C. of 1100 deals with suits and issues alone, the general principles underlying the same are applicable to other proceedings also.— **17 T. L. J.**, *125.*

**57.** The rule that a dismissal of a suit for default of appearance would prevent the decision from operating as *res judicata,* though generally true as regards Courts of first instance, cannot be indiscriminately applied to cases of dismissal by Courts of appeal.

An appeal may be dismissed either before the hearing or at the hearing. A dismissal before the hearing is technically known as 'rejection' of the appeal and it is avowedly a disposal not on the merits. It is rather a refusal to hear it on the merits for the reason that the appeal is not properly constituted or because all the conditions necessary to be fulfilled to entitle an appellant to a hearing on the merits have not been satisfied. In such cases there is properly speaking no appeal at all and therefore nothing to prevent the decision sought to be appealed against from operating as *res judicata.* When the appeal is disposed of at the hearing, strictly speaking, the judgment should be one confirming, varying or reversing the decree appealed against, unless the parties agree as to some other form of decree or order.—See Section 546 [=Or. XL. r. 31]. Generally therefore a judgment of dismissal by an Appellate Court is an affirmance of the decree under appeal and its effect is to restore to it the attribute of finality which was in suspense while the appeal was pending. There may however be cases in

11. Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.

Bar to further suit.

12. A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—

When foreign judgment not conclusive.

---

which such dismissal may leave the merits open either expressly or by necessary implication.— **42 T. L. R.**, *231* (=**17 T. L. J.** *436*).

**58.** Where a suit for redemption has been instituted and the decree obtained, but the decree owing to non-execution has become time-barred, a subsequent suit for the redemption of the same mortgage is not maintainable, being barred by *res judicata*, even though the mortgage is not time-barred.— **19 T. L. J.**, *743*.

**59.** See also—

Part II, Execution (General).— **43 T. L. R.**, *136* (=**18 T. L. J.**, *326*).
**18 T. L. J.**, *880*.
Sec. 40.— **18 T. L. J.**, *485*.
**19 T. L. J.**, *322*.
Or. XXI, r. 11.—**4 S. D.**, *188*.
„ r. 16.—**17 T. L. J.**, *276*.
„ r. 56.—**19 T. L. J.**, *481*.
Or. XXIII, r. 1.—**24 T. L. R**, *127*.
**19 T. L. J.**, *673*.

---

**Sec. 11** [ = „ = *S. 12* ]

I. This Section was newly introduced in the British Indian Code, and the Special Committee observed in their Report that the Clause was "necessitated by the transfer of certain of the provisions of the existing Code to Rules." For the Rules that bar a fresh suit in respect of the same cause of action—

*Vide* Or. 2, r. 2—Omission to sue in respect of part of a claim.
Or. 9, r. 9—Decree against plaintiff by default bars fresh suit.
Or. 22, r. 9—Abatement of suit bars fresh suit.
Or. 23, r. 1—Withdrawal of suit without leave of Court bars fresh suit.

II. Cause of action means every fact which is necessary for the plaintiff to prove in order to succeed in his suit; and everything which, if not proved, gives the defendant an immediate right to judgment must be part of the cause of action. It does not comprise every piece of evidence which is necessary to prove such facts, but every fact which is necessary to be proved to entitle him to a decree." It refers to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour. It is an infringement of the right which the plaintiff possesses by the defendant and includes also the right so infringed.— **43 T. L. R.**, *310* (= **17 T. L. J.**, *523*).

**Sec. 12** [ = S. 10 = *S. 13* ]

I. This Section is the same as Section 13 in the British Indian Code, except that in Clause (*c*) the wording in that Code is:— "Where it appears......international law or a refusal to recognise the law of British India in cases in which such law is applicable." A similar wording was adopted in the

(*a*) where it has not been pronounced by a Court of competent jurisdiction;

(*b*) where it has not been given on the merits of the case;

(*c*) where it appears on the face of the proceedings to be founded on an incorrect view of international law or of any law in force in Travancore;

(*d*) where the proceedings in which the judgment was obtained are opposed to natural justice;

(*e*) where it has been obtained by fraud;

(*f*) where it sustains a claim founded on a breach of any law in force in Travancore.

---

original Bill. But the Select Committee retained the wording of the old Section.

In regard to Clause (*a*), which is new, the Notes on Clauses said:—"A judgment is rendered liable to be impeached on the ground of absence of jurisdiction in the Court which had pronounced the judgment. The reason is obvious, and the view of law clear, as to why such a provision may be included."

II. In Regulation II of 1065, the Section was as follows:—"10. No foreign judgment shall operate as a bar to a suit in Travancore—

(*a*) if it has not been given on the merits of the case;

(*b*) if it appears......in force in Travancore;

(*c*) if it is, in the opinion of the Court before which it is produced, contrary to natural justice;

(*d*) if it has been obtained by fraud:

(*e*) if it sustains......in Travancore."

III. See Section 2 for definition of "Foreign Judgment."

IV. For execution of foreign decrees, see under Section 38-A.

**Case Law.**

**1.** Regulation IV of 1061 has not the effect of creating two classes of foreign judgments, the one enforceable in the Courts of this State by execution and the other only enforceable by a separate suit. There is only one class of valid foreign judgments which till the year 1061 could only be sued on and which now can be executed as if they had been made by the Courts of this State. If for some reason or other a foreign judgment cannot be executed in Travancore, say, as having been pronounced by a Court having no jurisdiction in the subject-matter of the suit, then it cannot be enforced at all, even by a separate suit.—

**14 T. L. J.**, *122*.

**2.** *Per Jacob, J.*—The proceedings of the Dewan of Cochin passed under the Cochin Regulation I of 1081 (Cochin Hindu Religious Institution Regulation) are judicial proceedings: the Dewan is exercising the powers of a Court and his order is analogous to a judgment. Hence the order passed by the Dewan is analogous to a foreign judgment.

The fact that the Dewan happens to be the chief Executive Officer of the Darbar does not disqualify him from exercising judicial functions and for this reason the

13. The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

Presumption as to foreign judgment.

*Place of Suing.*

14. Every suit shall be instituted in the Court of the lowest grade competent to try it.

Court in which suits to be instituted.

---

foreign judgment cannot be said to be contrary to natural justice.

*Per Chatfield, J.*—The order of the Cochin Government under the Cochin Regulation I of 1081 is a foreign judgment, and as the proceedings taken in Cochin would be perfectly valid and proper if taken in this State under the Travancore Regulation III of 1079, the Order of the Cochin Government is not contrary to natural justice.—

**15 T. L. J., *140*.**

[See 44 T. L. R., 253 (= 18 T. L. J., 505) under Section 38-A.]

**3.** See also cases under Section 38-A, *Infra*.

**Sec. 13** [ = S. 9, Ex. VI = *S. 14*]

I. This corresponds to Explanation VI in the old Section 9 which was as follows: "VI.—Where a foreign judgment is relied on, the production of the judgment duly authenticated is presumptive evidence that the Court which made it had competent jurisdiction, unless the contrary appears on the record; but such presumption may be removed by proving the want of jurisdiction."

II. The Section follows the wording of Section 14 of the Indian Code. The reason for making it a separate Section in that Code was thus explained by the Select Committee which reported on the Indian Code Bill of 1901:—"The existing Explanation VI, which in strictness is not an explanation at all but rather a substantive rule of evidence, has been relegated by us to a more convenient position at the end of the Chapter."—

*India Gazette dated 21-3-1903, Pt. V.*

III. See Note under Section 38-A, *Infra*.

**Sec. 14** [ = S. 11 = *S. 15*]

I. In the Statement of Objects and Reasons of the Indian amending Bill of 1901, it was observed:—"This provision has been held to regulate procedure only, and not to deprive any Court of jurisdiction otherwise possessed by it.

It has been held that it is the money-value of the original suit that fixes the jurisdiction throughout the subsequent litigation in its several stages. Jurisdiction, if properly exercised with regard to the suit at the time of its institution, ought not to be ousted merely because a plaintiff has made unwarrantable additions to his claim; nor should it be lost in execution because, by the accumulation of interest, the value of the property has increased; although it may be destroyed if the plaint is so amended as to exceed the pecuniary limits governing the particular Court".—

*India Gazette dated 21-12-1901, Pt. V.*

II. Where the subject-matter is not capable of being estimated at a money-value, the value of the suit for purposes of

jurisdiction is that specified by the Rules made by the High Court under the Suits Valuation Regulation, III of 1068 (See Page 767, Vol. 1).

III. 1. This Rule is only a rule of procedure and not of jurisdiction, a direction to the suitor and not an absolute rule binding on the Court (23 Mad, 357).

2. A subordinate Judge is not precluded from trying a suit within the jurisdiction of the Munsiff's Court (17 Cal. 155).

3. The District Judge, Subordinate Judge and Munsiff would have concurrent jurisdiction in respect of all suits not exceeding Rs. 1000 in value of their subject-matter which were within the local limits of the Munsiff's jurisdiction (8 Bom. L. R., 516).

4. There is no provision either in the various Civil Courts Acts or in the Code, prescribing a minimum jurisdiction as there is prescribing a maximum jurisdiction. A superior Court is by this Section forbidden from trying a suit cognizable by an inferior Court, not on account of any inherent incompetency to try it, but on grounds of public convenience and economy. It has been thought that this Section prescribed a minimum limit of jurisdiction, and that, for instance, a Subordinate Judge would have no jurisdiction to try a suit which, owing to its value, was triable by a Munsiff. But it has been held that this Section relates to procedure only, and regulates the practice of the Courts, but does not deprive any Court of jurisdiction which it may otherwise possess. The Section is merely directory, and does not oust the jurisdiction of a Subordinate or District Judge (14 C. W. N., 322).

5. The Civil Courts Regulation of Travancore prescribes only a maximum and not a minimum jurisdiction. District Courts in this State, as in British India, are Courts of unlimited pecuniary jurisdiction. The unlimited nature of the jurisdiction of District Courts extends, so to speak, not only upwards but also downwards. In other words, District Courts are competent to try all suits, however high or however low their value may be (28 T. L. R., 94).

### Case Law.

1. A suit was filed in the Munsiff's Court. On the defendant objecting to the valuation, a commission was issued to ascertain the value of the property. On the report of the commissioner, the Munsiff returned the plaint to be presented to the proper Court; whereupon the suit was filed in the District Court. After filing, the plaintiff put in a petition stating that he would not claim relief as regards half of the property. It was contended that the suit was thus within the Munsiff's jurisdiction, and the District Judge had no jurisdiction to try the case.

*Held.*—The objection raised was overruled following the first three of the British Indian decisions mentioned in the Notes above.— **26 T. L. R.**, *200*.

Fol.—28 T. L. R., 94
( = 3 T. L. J., 57).
Ref.—32 T. L. R., 38
( = 6 T. L. J., 101).

2. The suit was for redemption and was filed in the Munsiff's Court. On the defendants' plea that they had improvements in the property, they were called upon to pay court-fees for the amount of the claim. On payment of the court fees, the Munsiff returned the plaint to be presented to the proper Court on the authority of 23 T. L. R., 123, in which it was held that, if the amount of the claim for improvements, &c., exceeds the pecuniary jurisdiction of the Court, the written statement on which fee has been levied as well as the plaint should be returned for presentation to the proper Court having jurisdiction over the combined subject-matter as a whole. The plaint was accordingly presented to the District Court which decreed redemption in favour of plaintiff. In appeal, it was contended on the strength of the ruling in 25 T. L. R., 1, overruling the decision in 23 T. L. R.,

28841



123, that the District Court had no jurisdiction to hear the case. On the question being referred to a Full Bench:

*Held.*—(1) The District Court had jurisdiction. Section 11 of the Code related to procedure only and regulated the practice of the Courts, but did not deprive any Court of jurisdiction which it otherwise possessed. The decision in 12 T. L. R., 188, that a District Court had no jurisdiction to entertain and try a suit which was below its pecuniary jurisdiction was overruled.

(2) Under Section 4 of the Suits Valuation Regulation, III of 1068, no Court of Appeal or Revision shall entertain an objection as to jurisdiction of the Court of first instance, based on the over-valuation or under-valuation of a suit, unless the objection was taken in the Court of first instance at or before the hearing at which issues were settled. In the case, no such objection was taken in the Court of first instance (F. B.).— **28 T. L. R.**, *94* (= **3 T. L. J.**, *57*).

Ref.—32 T. L. R., 38 (= 6 T. L. J., 101).

**3.** Plaintiff at first presented a suit in the Munsiff's Court, and, on the contention of the defendants as to jurisdiction, the plaint was returned to be presented before the District Court. When the plaintiff presented the plaint before the District Court, the second defendant contended that the plaintiff's claim was within the pecuniary jurisdiction of the Munsiff. The District Judge upholding the contention of the second defendant returned the plaint to be presented to the Munsiff's Court. When the suit came again before the Munsiff, the second defendant turned round and said that the Munsiff's Court had no jurisdiction.

*Held.*—The second defendant was clearly estopped from raising that contention after the District Judge, on his contention, had decided that the Munsiff had jurisdiction. Both the parties to a suit are bound by an order passed in their presence and by the valuation made by the Court in their presence. The Zillah Court had jurisdiction to decide whether it had jurisdiction over the suit or not, and neither side could afterwards be allowed to impugn it except by way of appeal. It would be impossible to put an end to litigation, if parties be thus permitted to play fast and loose with their pleadings.— **2 S. D.**, *261*.

**4.** A plaint valued at Fs. 10,000 filed in 1083 before a District Court was returned for presentation to the proper Court on the ground that the Sirkar was an unnecessary party to the suit. The suit was accordingly instituted in the Munsiff's Court in 1085, when the Munsiff's pecuniary jurisdiction had been raised to Rs. 2,000, and the Munsiff tried and disposed of the suit. It was contended in appeal that the suit of 1085 was a continuation of the suit of 1083, filed in the District Court when the limit of the Munsiff's jurisdiction was only Rs. 1000 and that the Munsiff had, therefore, no jurisdiction to try the suit.

*Held.*—The re-instituted suit must be regarded as an independent one in all respects except that, under certain conditions, the time requisite for going from Court to Court is excluded in computing the period of limitation. The re-instituted suit is a new suit and is governed by the law applicable to it at the time of the re-institution. By the time the suit was filed in the Munsiff's Court, his pecuniary jurisdiction has been raised, and he had the right to entertain the suit.— **31 T. L. R.**, *169* (= **5 T. L. J.**, *344*).

**5.** In cases where it is thought the Sirkar should be made a party, the Munsiff's Courts should implead the Sirkar as a party, and then return the plaint for presentation to the proper Court. Mere direction to implead the Sirkar as a party would not justify the return of a plaint.

The element which takes away the jurisdiction is the existence of the Sirkar as a

15. Subject to the pecuniary or other limitations prescribed by any law, suits—

Suits to be instituted where subject-matter situate.

(a) for the recovery of immovable property with or without rent or profits,

(b) for the partition of immovable property,

(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,

(d) for the determination of any other right to or interest in immovable property,

(e) for compensation for wrong to immovable property,

(f) for the recovery of movable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

---

party. Until the Sirkar is put on record as a party, the District Munsiff has jurisdiction, and hence the Munsiff before returning the plaint should make the Sirkar a party.— **5 T. L. J.,** ***351.***

**6.** Suit for 350 fanams being balance of consideration for the assignment of a mortgage right by plaintiff to defendant. Suit was filed first as a Small Cause, but under order of Court it was refiled as an original suit. The Munsiff gave plaintiff a decree. The District Judge, on appeal, dismissed the suit finding that the whole amount of the consideration had been paid. In second appeal, plaintiff contended that the suit, though tried as an original suit, was still a Small Cause suit, and that though the decision of the Munsiff was valid, no appeal lay to the District Court.

*Held.*—(1) The suit being only for money, and not for specific performance of a contract, was triable as a Small Cause.

(2) Section 13 of the Civil Courts Regulation merely regulated the procedure to be adopted in the adjudication of certain classes of suits, and did not take away the jurisdiction of the Munsiffs to try them as original causes, and therefore, the decision of the suit by the Munsiff as an original cause was valid and operative. The words "shall try" in Section 13 are not conclusive.

(3) Under a strict interpretation of Section 512, C. P. C. [new Section 76] and Section 13, of the Civil Courts Regulation, which interpretation was more convenient and conducive to justice, it was the nature of the *trial* and not of the *suit* that decided whether an appeal lay or not, and that therefore in the present case, as the suit, though a Small Cause, was *tried* as an original suit, the appeal to the District Court was competent.

(4) In spite of the omission of the party to raise the objection to jurisdiction in the lower Courts, the High Court was bound to hear and consider the objection, as where there is an entire absence of jurisdiction in the lower Courts the objection to it could not be waived by the party, and his failure to take it could not, therefore, operate to confer jurisdiction.— **32 T. L. R.,** ***88*** **(=6 T. L. J.,** ***101*****).**

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

*Explanation.*—In this Section, "property" means property situate in Travancore.

---

**Sec. 15** [ = S. 12 = *S. 16* ]

I. The changes made in the old Section are:—(1) the addition of the words "with or without rent of profits" in Clause (*a*), and (2) the insertion, in Clause (*c*), of the word "sale" after "foreclosure" and of the words "or charge upon" after the words "mortgage of."

II. The Section as it stands now is the same as in the British Indian Code. In regard to addition No. (1) above noted, the Indian Special Committee in their Report said:—"The insertion of the words "with or without rent or profits" is intended to remove any difficulty there may be where the defendant does not reside within the local limits of the Court within whose jurisdiction the property is situate."

III. The Section specifies the Courts in which suits relating to immovable property and suits for the recovery of movable property actually under distraint or attachment are to be instituted.

**Case Law.**

1. Residence in Travancore under circumstances raising the presumption that it is not casual and possession of property within Travancore are sufficient to give jurisdiction to the Travancore Courts over persons who are not born subjects of His Highness the Maha Raja of Travancore.—

**3 T. L. R.,** ***35.***

Ref.—33 T. L. R., 166 (=7 T. L. J., 293).

2. A suit was instituted in the Anjikymal Zillah Court in the Cochin State in respect of a property situated in that State: and a decree was passed. During the pendency of the suit, the territory in which the property in litigation was situate was awarded to Travancore by the decision of the Arbitrator in the Travancore and Cochin States Boundary Dispute. The decree was passed after such territorial transfer. When plaintiff proceeded to execute the decree after getting it transferred to the Parur Zillah Court, a purchaser of the property from the heirs of the original mortgagor-lessee objected to the execution and the objection was allowed. In the suit then instituted to enforce the attachment:

*Held.*—The decree of the Cochin Court against the mortgagor-lessee having been passed after the transfer of the mortgaged land to the Travancore jurisdiction, the decree and the subsequent attachment thereunder were inoperative.—

**13 T. L. R.,** ***27,***

Fol.—K. P., 314.

3. A money decree obtained by X against Y in the Quilon Munsiff's Court was transferred for execution to the Kottarakarai Munsiff's Court and in execution of that decree, properties belonging to plaintiff and Y were attached. In a suit brought by plaintiff in the Kottarakarai Munsiff's Court to cancel the decree and execution proceedings on the ground that the decree was

fraudulent and collusive as the bond on which it was based was a forgery, both the lower Courts concurrently found the plaint allegations as to the bond being a forgery and the decree collusive, true, but the Munsiff's decree confined itself to a direction that the attachment be cancelled while the District Court in confirming the Munsiff's decree remarked that the decree and attachment are liable to be cancelled.

*Held* (following 18 T. L. R., 14).—The Kottarakarai Munsiff's Court being one of equal status had no jurisdiction over the suit. Till the decree is set aside by the Quilon Court, the Kottarakara Court ought to treat it as a valid decree, and as plaint properties are Tarwad properties, execution against the same is perfectly valid till the decree is set aside. Section 12, CivilProcedureCode,which directs that suits for determination of rights to and interests in lands should be brought in the Court within whose jurisdiction the lands lie, cannot be held by a side wind to give jurisdiction to the executing Court to entertain a suit for setting aside the attachment of lands effected in execution of a decree of another Court on the ground that the latter decree itself was null and void. The non-liability of the lands from attachment under the decree of the other Court is wholly dependent upon the alleged invalidity of the decree, and so long as the decree continues valid (which it does till set aside by the Court which passed it), the attachment proceedings also continue to be perfectly valid.

The decree of the lower Courts was therefore reversed and the plaint directed to be returned to plaintiff to be presented to the proper Court having jurisdiction.—
**21 T. L. R.,** *138.*

Ref.—32 T. L. R., 168
( =6 T. L. J., 378 ).
Dist.— 6 T. L. J., 52.
Overruled.—40 T. L. R., 194
( = 14 T. L. J., 503).

**4.** Suit to set aside a panayam deed in respect of the plaint properties, a decree based thereon, a court sale in pursuance of the decree, and a sammatham deed in respect of the properties executed by some of the members of the plaintiff's Tarwad, and also for recovery of the properties. Plaintiff alleged that the properties belonged to the Tarwad, the documents above mentioned were unsupported by consideration and Tarwad necessity, and that the decree and court sale were fraudulent and collusive. The decree whose cancellation was sought, was passed and the sale ordered by the Alleppey District Court within whose jurisdiction the properties were at that time situated. The present suit was brought in the Kottayam District Court to whose local jurisdiction the locality 'where the properties lay was transferred and within whose jurisdiction the defendants permanently resided. The District Judge of Kottayam relying on the decisions in 18 T. L. R., 14 and 21 T. L. R., 138 held that he had no jurisdiction to entertain a suit for the cancellation of the decree of the Alleppey District Court and returned the plaint to be presented to the competent Court. On appeal:

*Held.*—The question of jurisdiction of Courts raised in the case should be decided with reference to the provisions of Chapter II of the Civil Procedure Code. Applying the provisions of Sections 12 and 14 of that Chapter (new Sections 15 and 19), it was clear that the present suit was rightly instituted in the Kottayam District Court inasmuch as the immovable properties sought to be recovered by the plaintiff were situated, and the defendants in the suit lived, and at least a part of the cause of action for the reliefs claimed in the suit had arisen, within the territorial jurisdiction of that District Court.

Applying the principle of Section 586, C. P. C., (see Section 34) which laid down that the expression "the Court which passed a decree" occurring in Chapter XIX of the Code included cases "where the Court which passed the decree to be executed has

ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed were instituted at the time of making application for the execution of the decree would have jurisdiction to try the suit," the decree in O. S. No. 284 of 1075 of the Alleppey District Court (the decree sought to be cancelled) might well, in the circumstances, be considered in law to have been passed by the Kottayam District Court.

Therefore even as regards the plaint relief for setting aside the decree of the Alleppey District Court, even accepting the view entertained in 18 T. L. R., 14 and 21 T. L. R., 138, as correct, the suit had been rightly instituted in the Kottayam District Court (F. B.).— **32 T. L. R.,** *168*
(**= 6 T. L. J.,** *378*).

Ref.—35 T. L. R., 190.
10 T. L. J., 336.
40 T. L. R., 194
(= 14 T. L. J., 508 ).

**5.** In execution of a decree of the Quilon Additional Munsiff's Court obtained by the 1st defendant against the 2nd defendant who was the Karanavan of the Tarwad of the plaintiffs and the 2nd defendant, the Tarwad property situate within the jurisdiction of the Haripad Munsiff Court was attached by that Court. The plaintiffs sued in the Haripad Court to set aside the attachment. The District Munsiff holding that he had no jurisdiction to entertain the suit returned the plaint for presentation to the proper Court.

*Held.*—The suit was one for declaration that the plaint property which was admittedly situate within the jurisdiction of the Haripad Munsiff's Court was not liable to be sold in execution of the decree of the Quilon Munsiff's Court. The cause of action for the suit was the attachment laid on the property by the Haripad Court in execution of the decree of the Quilon Court under Sections 12 and 14 of the C. P. C.,(new Sections 15 and 19), the suit was cognisable by the Haripad Court, even though that Court might have to declare that the Quilon decree could not bind the Tarwad.—
**35 T. L. R.,** *190.*

Ref.—40 T. L. R., 194
(= 14 T. L. J., 508 )

**6.** Plaintiffs, Nanjinad Marumakkavazhi Vellalas, sued for recovery of Ukanthudamai dues from the Tarwad properties of their deceased father, a member of an undivided Tarwad consisting of several branches and possessed of properties in Travancore and Cochin, the properties in the latter State being in the enjoyment of one of such branches. The plaintiffs, while basing their claim for Ukanthudamai on the value of the whole Tarwad properties, prayed that the sum that might be decreed to them be charged on the Travancore properties alone. The fourth defendant, the common Karanavan of the whole Tarwad, was a party to the suit, but not any of the members of the Cochin branch. The trial Judge, relying upon Section 12 of the Civil Procedure Code, held that the properties in Cochin could not and should not be taken into account in determining the plaintiff's claim and directed the plaintiffs to file an amended plaint excluding the value of the Cochin properties. The plaintiffs appealed against the order.

*Held.*—The Judge's order could not be supported and should be reversed.

A suit for the recovery of Ukanthudama dues by the sons of a deceased Nanjinad Vellala father is essentially a suit for the recovery of money, which by the customary law prevailing among the Nanjinad Vellalas is a charge upon the immovable properties of the Tarwad to which the father belonged. It is not a suit for the recovery of any share of the immovable properties owned by the father's Tarwad. No doubt, in arriving at the amount due to the children of a deceased Nanjinad Vellala for Ukanthudama, the *quantum* of the share, which the father would have taken in the Tarwad properties —treating them for the moment as if they were partible—is calculated according to

certain rules laid down in the reported decisions but this is only for ascertaining the value of the fraction of such share which is taken as the Ukanthudama amount due. The sons of a deceased Najinnad Vellala cannot insist as a matter of right, on being given a share of the corpus of the properties belonging to the father's Tarwad in satisfaction of their claims for Ukanthudama.

The plaintiff's claim being one for money which was a charge on all the Tarwad properties of their father, wherever situate, they had a right to realise whatever amount that might be decreed to them on account of their claim from all such properties. The value of the Cochin properties had also to be taken into account. But there was nothing to prevent the plaintiffs from saying that they would be satisfied with a charge for their claim on some portion alone of the Tarwad properties of their father, *viz.*, the immovable properties situated in Travancore.

The Tarwad of the father being undivided and represented in the suit by the fourth defendant, the Karanavan residing in Travancore, there was no legal bar to the plaintiffs asking the Travancore Court to take into account also the value of the properties in Cochin, as to which the Tarwad's title was indisputable, in calculating the plaint claim.

The suit itself being clearly one for money, Section 12 of the Civil Procedure Code had no application. Nor could the suit be considered as one to obtain relief respecting immovable property falling within the Proviso to that Section. The plaint referred to immovable property outside Travancore, but it was not, for that reason, a suit for relief respecting that property. The Explanation of the term property in Section 12 clearly showed that the suit was not governed by that Section.—

**36 T. L. R.**, *253*
(= **10 T. L. J.**, *329*).

**7.** The widow and daughter of a deceased Karanavan of a Nanjinad Vellala Tarwad sued in the Nagercoil Munsiff's Court and obtained a decree for the recovery of Ukanthudama from all the properties of that Tarwad. In appeal, a compromise decree was passed making some of the Tarwad properties liable for the Ukanthudama. The decree was transferred for execution to the Padmanabhapuram Munsiff's Court. There, a purchaser at a private sale of the properties made liable for the decree debt filed a suit for the cancellation of the decree on the ground that he had no knowledge of the decree and that the decree was obtained subsequent to his purchase of the properties in question. The Padmanabhapuram Munsiff holding that the decree having been passed by the Nagercoil Munsiff's Court, he had no jurisdiction to try the suit returned it for presentation to the proper Court.

*Held.*—The Padmanabhapuram Munsiff had jurisdiction to try the suit.

Where a decree has been obtained in one Court, and in execution of that decree, the judgment-debtor's property situated within the jurisdiction of another Court is proceeded against, the latter Court is competent to entertain a suit for setting aside the decree and execution proceedings.

Chapter II of the Civil Procedure Code [Place of Suing—Sections 11 to 21 = new Sections 14 to 19 and 21 to 23] contains the provisions for determining the Courts in which suits of different kinds are to be instituted, and these provisions are not to be nullified by what may be considered to be the policy of the law as to one Court sitting in judgment over the validity of the decree of another Court. Having regard to the provisions of Chapter II, the rulings in 35 T. L. R., 190 and 6 T. L. J., 52 and the trend of the recent decisions in the British Indian Courts, the decisions in 18 T. L. R., 14 and 21 T. L. R., 138 have to be over-ruled (F. B.).— **40 T. L. R.**, *194*
(= **14 T. L. J.**, *568*).

Suits for immovable property situate within jurisdiction of different Courts.

**16.** Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

Place of institution of suit where local limits of jurisdiction of Courts are uncertain.

**17.** (1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immovable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction:

---

**Sec. 16** [ = S. 16 = *S. 17* ]

I. The corresponding Section of Regulation II of 1065 was as follows:—.

"**16.** If the suit be to obtain relief respecting, or compensation for wrong to, immovable property situate within the limits of a single district, but within the jurisdiction of different Courts, the suit may be instituted in the Court within whose jurisdiction any portion of the property is situate, provided that in respect of the value of the subject-matter of the suit, the entire claim be cognizable by such Court.

If the immovable property be situate within the limits of different districts, the suit may be instituted in any Court, otherwise competent to try it, within whose jurisdiction any portion of the property is situate."

II. **1.** This Section is intended for the benefit of suitors, the object being to avoid multiplicity of suits.

**2.** Where a suit may be filed in more than one of several Courts, it is a general principle of law that the plaintiff may select the *forum* in which to bring the suit (19 M. 477).

**Sec. 17** [ = S. 13 = *S. 18*]

**1.** Sub-section (2) of Section 18 in Regulation II of 1065 was as follows:—"(2) Where a statement .............is situate, the Appellate or Revisional Court shall not allow the objection if, in its opinion, there was at the time of the institution of the suit any reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto".

**2.** The words at the end of the new Sub-section (2)—"and there has been a consequent failure of justice"—are taken from the British Indian Code. The Indian Special Committee in their Notes on Clauses say that they added these words "in order still further to restrict the taking of technical objections as to jurisdiction".

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

(2) Where a statement has not been recorded under Sub-section (1), and an objection is taken before an Appellate or Revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the Appellate or Revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto and there has been a consequent failure of justice.

Suits for compensation for wrongs to person or movables.

18. Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

*Illustrations.*

(a) A, residing in Nagercoil, beats B in Alleppey. B may sue A either in Alleppey or in Nagercoil.

(b) A, residing in Nagercoil, publishes in Alleppey statements defamatory of B. B may sue A either in Alleppey or in Nager coil.

Other suits to be instituted where defendants reside or cause of action arises.

19. Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

(a) the defendant or each of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

---

**Sec. 18** [= S. 15 = *S. 19*]

**Case Law.**

See under Sec. 19.—**27 T. L. R.**, *167* (= **2 T. L. J.**, *344*).

" Or. I, r. 1.— **28 T. L. R.**, *148*.

**Sec. 19** [= S. 14 = *S. 20*]

I. This Section reproduces Section 20 of the British Indian Code. Section 14 of Regulation II of 1065 corresponding to the new Section 19 was as follows :—

"14. *Suits to be instituted where defendants reside or cause of action arose.*—Subject to the limitations aforesaid, all other suits shall be instituted in a Court within the local limits of whose jurisdiction—

(a) the cause of action arises; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

*Explanation I.*—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

*Explanation II.*—A corporation shall be deemed to carry on business at its sole or principal office in Travancore or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

*Illustrations.*

(a) A is a tradesman in Quilon. B carries on business in Trivandrum. B, by his agent in Quilon, buys goods of A and requests A to deliver them to the South Indian Railway Company. A delivers the goods accordingly in Quilon. A may sue B for the price of the goods either in Quilon where the cause of action has arisen, or in Trivandrum, where B carries on business.

(b) A resides at Nagercoil, B at Quilon and C at Trivandrum. A, B and C being together at Alleppey, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Alleppey, where the cause of action arose. He may also sue them at Quilon, where B resides, or at Trivandrum, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.

---

(b) all the defendants, at the time of the commencement of the suit, actually and voluntarily reside, or carry on business, or personally work for gain; or

(c) any of the defendants, at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain: Provided that the defendants who do not actually and voluntarily reside, or carry on business, or personally work for gain, as aforesaid, have immovable property within Travancore, or that the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

*Proviso*—In a suit on a foreign judgment, the possession by the defendant or any of the defendants of property movable or immovable within the jurisdiction of the Court in which the suit is instituted, is sufficient to give jurisdiction to such Court.

*Explanation I.*—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

*Explanation II.*—A Corporation or Company shall be deemed to carry on business at its sole or principal office in Travancore or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

*Explanation III.*—In suits arising out of contracts, the cause of action arises, within the meaning of this Section, at any of the following places, *viz*:—

(1) the place where the contract was made;

(2) the place where the contract was to be performed or performance thereof completed :

(3) the place where, in performance of the contract, any money to which the suit relates, was expressly or impliedly payable."

II. In regard to the omission of Explanation III in the Indian Code, the Indian Special Committee say that it "has become unnecessary owing to the addition made in Sub-clause (*c*) of the words 'wholly or in part' in reference to the cause of action."

III. The following were the observations made in the Notes on Clauses appended to the Statement of Objects and Reasons for the Indian Civil Procedure Code Amending Bill of 1901 :—"This provision has been recast. The existing Section commences by requiring the 'cause of action' (which means ordinarily the sum total of the facts necessary for a plaintiff to allege before he can obtain a relief) to have arisen within the local limits of the Court's jurisdiction. On grounds of convenience, however, it has been held that, for the purposes of this Section, the arising of a material portion of the cause of action within jurisdiction would be sufficient, and Explanation III which relaxes the rule in the case only of suits arising out of contract, was accordingly added by the amending Act of 1888. There seems to be no sufficient reason for so limiting the relaxation ; and, in view of English experience, it is thought preferable to apply the principle embodied in Section 74 of the County Courts Act, 1888 (51 and 52 Vict. c. 43) by requiring only a material portion of the cause of action to have so arisen, provided that, in the case of a suit instituted under this provision, the leave of the Court is first obtained. It may be that, in these circumstances, Explanation III is no longer strictly necessary ; but it is proposed to retain it for the present as a useful and practical guide for subordinate tribunals."

III. Explanation III, though omitted, is good law and contains a correct statement of the meaning of 'cause of action' in cases arising out of contracts. The words "wholly or in part' makes the clause applicable to all classes of suits (34 All., 49).

### Case Law.

1. A suit founded on a breach of contract may be brought in any of the three following Courts :—

(*a*) The Court within whose jurisdiction the contract was made.

(*b*) The Court within whose jurisdiction the breach of such contract took place.

(*c*) The Court within whose jurisdiction the defendant resides.

When a Court finds that it has no jurisdiction to entertain a suit, it ought to return the plaint to the plaintiff to enable him to present it in the Court that has jurisdiction.
1 T. L. R., 96.

Fol.—8 T. L. R. 161.

**2.** Where a person has his permanent residence in one place and his ancestral house at another, an intention to return to the ancestral family may be presumed in the absence of evidence to the contrary.

Either of the dwellings may be taken as his residence for the purpose of determining jurisdiction.— **8 T. L. R.**, *89.*

Dist.—30 T. L. R., 235.

**3.** A residing at Quilon executed to B carrying on business at Alleppey a pro-note which specified no place of payment. B indorsed the pro-note to C who sued in the Alleppey Zillah Court for recovery of the money. A objected to the jurisdiction of Alleppey Zillah Court.

*Held.*—In the absence of any mention of a specific place for payment, the reasonable inference would be that the payment should be made where the holder of the note permanently resides or carries on business. Where there is no express covenant, the presumption of law is that the obligor is bound to seek the obligee and tender the money at the residence or place of business of the latter (I. L. R., 9 Cal., 106). Consequently, the cause of action must be taken to have arisen within the jurisdiction of the Alleppey Zillah Court, and the objection as to jurisdiction was unsustainable.— **11 T. L. R.**, *184.*

Fol.—17 T. L. J., 451.

**4.** In a suit on a pro-note executed by the defendant at Mattancheri in Cochin, the defendant while admitting the fact of his execution contended *inter alia* that the suit was barred by the Limitation Law of Cochin where the contract was entered into and that under Section 14, C. P. C., the suit was not maintainable at Nagercoil inasmuch as the cause of action arose in Cochin and Cochin was the place where he resided and carried on business.

*Held.*—Though the contract was entered into in Cochin, yet under Clause (*b*) and Explanation I to Section 14, C. P. C., the defendant could be sued in Nagercoil where he is proved to have a permanent dwelling. The Limitation Law of this State was applicable as the parties were not domiciled during the period of limitation in Cochin and as it was not shown that the Cochin Limitation Law would extinguish the contract.

A person's domicile is the place where he has his permanent house and principal establishment and to which whenever he is absent he has the intention of returning. **K. P.**, *387.*

**5.** To recover compensation for the infringement of plaintiff's copyright in a certain book, he instituted the suit on 5-10-1083 in the Trivandrum Principal Munsiff's Court. The plaint alleged that copies of the book printed in the defendant's press at Quilon were offered for sale in Trivandrum on the 2nd Edavom 1080 through his agent. The defendant contended *inter alia* that the Trivandrum Court had no jurisdiction to entertain the suit and that it was barred by limitation as the plaintiff had not come to Court within the 12 months prescribed by Section 5 of the Copyright Regulation.

*Held.*—Inasmuch as the defendant's agent had possession of the copies for sale in Trivandrum, it amounted to defendant's possession and the cause of action having therefore arisen in Trivandrum, the Trivandrum Court had jurisdiction under Section 14 of the Civil Procedure Code. Further, under Section 15 of the Civil Procedure Code, in suits for compensation for wrong to movable property (new Section 18), plaintiff had the option to institute the suit in Trivandrum, because it was there that the wrong was committed. In this view also, the lower Court had jurisdiction to entertain the suit.— **27 T. L. R.**, *167* (**=2 T. L. J.**, *344*).

**6.** Where a suit was brought before the Quilon Munsiff's Court to recover money due under a Chitty conducted by the defendants who had their Tarawad house at Paravoor (within the jurisdiction of the Quilon Munsiff's Court) but who had been for more than

20 years before suit living in their self-acquired property at Warkalai (within the jurisdiction of the Attingal Munsiff's Court) where the Chitty was being conducted:

*Held.*—The defendant's residence at Warkalai, and not their Tarwad home at Paravoor, should be taken to be their permanent residence and the District Munsiff at Quilon had, therefore, no jurisdiction to entertain the suit.

The residence which is necessary to form the foundation of jurisdiction under Section 14, is an actual and *bona fide* residence and one of a more or less permanent character, although a man may have more than one permanent residence and although, where he has a permanent residence, the permanency of such residence will not be negatived by a temporary absence from it or by his living in a temporary lodging. Explanation I provides for the last class of cases. But in respect of causes of action arising at the permanent residence, suits must be brought only in the Court having jurisdiction there. The question whether, in spite of absence and in consequence of an intention to return, a family house, like any other place of residence, is to be considered a permanent residence is one of fact.—**30 T. L. R.**, *235*.

**7.** Even though the defendant is an absent foreigner, if the cause of action arises within the jurisdiction of a Travancore Court, it has jurisdiction to try the suit.

Reference was made to Section 6 of the Civil Procedure Code [new Section 7 (1) ]. It was contended that, under the rules of international law, the Courts of any country have no jurisdiction to try a case against an absent foreigner, *i. e.*, a foreigner who was not present in the country at the date when the suit was instituted. Also, that Section 14 confers no jurisdiction but merely decides in which a suit should be filed where jurisdiction already exists and that the Code of Civil Procedure must be construed as not infringing the principles of international law. In British India, it was held that a British Indian Court has jurisdiction to entertain a suit, if the cause of action has arisen within the local limits though the defendant does not reside within such limits, but is a foreigner, domiciled and residing in a protected Indian State. The Sovereign of a country may by legislation confer on his Courts a power to entertain suits against absent foreigners which would be recognised in the State itself, though such legislation might have no effect or validity in Courts outside the State, if it were necessary to take proceedings there (F. B.).— **10 T. L. J.**, *117*.

**8.** A suit for money was brought against several defendants. Some of them (including the appellants 4th and 8th defendants) who were admittedly foreigners owning no property within the jurisdiction of the trial Court, pleaded to its jurisdiction for entertaining the suit. This contention was put in issue between the parties, formally tried, and found against the defendants by the trial Court. The suit was proceeded with on the merits of the respective cases of the parties and decided against the appellants. The 4th and 8th defendants who were foreign subjects contended in appeal that the trial Court had no jurisdiction to deal with the suit against them.

*Held.*—(1) The conduct of the defendants in having adduced evidence in support of their case and in having omitted to appeal from the order of the trial Court overruling their objection as to jurisdiction amounts to an acquiescence in the institution of the suit and submission to the jurisdiction of the trial Court.

Where a party has voluntarily submitted himself to the jurisdiction of a Court, he cannot afterwards be heard to say that the Court has no jurisdiction. This submission may take place in different ways. If a person selected, as plaintiff, the tribunal of a country as the one in which he would sue, he could not subsequently avoid the judgment of that tribunal on the ground of want of jurisdiction. Where again, the defendant appears without protest, he must be

held to submit himself to jurisdiction. Where he appears and pleads to jurisdiction, but also pleads to the merits, or at any rate, takes part in a defence on the merits, he must be considered to have submitted himself to the jurisdiction of the Court.

(2) Sections 14 and 17, C. P. C., deal with distinct classes of suits, and there is no warrant for reading the two Sections together on the assumption that the same procedure applies to both.

(3) The provisions of Chapter II of the Civil Procedure Code relating to jurisdiction have no application except when the conflict as to jurisdiction is one between two Courts in this State. Where the contending defendants are foreigners who have no domicile and own no property in Travancore, the rule applicable is one of private international law. Judged by that law, the defendant's conduct amounts to submission to jurisdiction (F. B.).

*Per Viraraghava Aiyengar, C. J.*—The word 'acquiesce' in Section 14 should not be understood in the restricted sense given to it by Section 17; for, though the idea connoted by the word 'acquiesce' is general and the fact of acquiescence might be established in a variety of ways, still under Section 17, the failure of the defendant to apply for stay of proceedings as provided therein was conclusive and constituted an acquiescence by him in the institution of the suit.

*Per Sesha Aiyar, J.*—Acquiescence is quiescence under such circumstances that assent may be reasonably inferred from it. It is essentially an instance of the law of estoppel by words or by conduct; and ordinarily, to constitute acquiescence there must be conduct or language inducing a reasonable belief that a right is foregone. On general principles, there can be no warrant for assigning to the term 'acquiescence' the special meaning prescribed for it in Section 17.— **38 T. L. R.,** *189*
(= **12 T. L. J.,** *109*).

[For the old Section 17, omitted in the new Regulation, see under Section 22 *Infra*].

**9.** In the absence of any express mention in the document itself of the place of performance, it is open to the Court to look at the circumstances existing at the date of the contract and to what has taken place subsequent thereto in order to decide what, in the contemplation of the parties was the place for the performance of the contract.

In the case, a pro-note was executed in Bodi in British India, but from the circumstances, the Court held that the parties contemplated performance in Travancore.— **13 T. L. J.,** *337.*

**10.** The suit was on a pro-note which made no mention of any specific place of payment.

The ordinary rule is that, in the absence of any agreement to the contrary, it is the duty of the obligor to seek out his creditor and make the payment at the creditor's place of residence or his usual place of business. This rule is applicable also to the determination of the question of jurisdiction under Section 14 of the Civil Procedure Code of 1095. The place of payment under this rule should be taken to be the place where the money is impliedly payable under the contract. As the document was silent on the matter, the ordinary rule of law governing the same could, by implication, be treated as part of the contract. The expression "impliedly" occurring in Section 14 justified the application of the ordinary rule of law relating to the place of performance in such matters.— **17 T. L. J.,** *451.*

**11.** See also—

Sec. 11.— **43 T. L. R.,** *310* (=**17 T. L. J.,** *523*).
" 15.— **32 T. L. R.,** *168* (=**6 T. L. J.,** *378*).
**35 T. L. R.,** *190.*
Or. I, r. 1.— **28 T. L. R.,** *148.*

**20.** No objection as to the place of suing shall be allowed by any Appellate or Revisional Court, unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

Objections to jurisdiction.

**21.** Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed.

Power to transfer suits which may be instituted in more than one Court.

**22.** (1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under Section 21 shall be made to the Appellate Court.

To what Court application lies.

(2) Where such Courts are subordinate to different Appellate Courts, the application shall be made to the High Court.

---

**Sec. 20** [ = ,, = *S. 21* ]

**Case Law.**

Where a Court has no jurisdiction over the subject-matter of the suit, the want of jurisdiction is a defect which cannot be waived by consent. An objection can be taken at any stage, provided that, on the admitted facts, the trial Court has no jurisdiction. It does not appear that any distinction can be drawn between cases where the Court has no jurisdiction on account of the value of the subject-matter and cases where it has no jurisdiction on account of the location of the subject-matter.

Section 20 of the new Code, corresponding to which there is no Section in the Code of 1065, cannot have any retrospective operation.— **18 T. L. J.,** *1171.*

**Sec. 21** [ = S. 19 = *S. 22* ]

**Sec. 22** [ = S. 20 = *S. 23 (1) and (2)* ]

**1.** Sections 21 and 22 correspond to Sections 19 and 20 of Regulation II of 1065 which are given below. Sections 17 and 18 which have been omitted in the new Regulation, following the Indian Code, are also sub-joined. In the Indian amending Bills there was a provision for stay of proceedings, &c., similar to Sections 17 and 18 of the Regulation. But the Select Committee omitted them as "unnecessary, sufficient provision having been made for transfers under the succeeding Clause." The four Sections of the Regulation mentioned above are :—

"17. "*Power to stay proceedings where all defendants do not reside within jurisdiction.* – If a suit, which may be instituted in more than one Court, is instituted in a Court within the local limits of whose jurisdiction the defendant or all the defendants does not or do not actually and voluntarily reside, or

23. (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—

General power of transfer and withdrawal.

(*a*) (i) transfer any suit, appeal or other proceeding pending in any subordinate Court to any other subordinate Court competent to try or dispose of the same, or

(ii) retransfer the same for trial or disposal to the Court from which it was transferred, or

(*b*) withdraw any appeal or other proceeding pending in any subordinate Court and try or dispose of the same.

---

carry on business, or personally work for gain, the defendant or any defendant may, after giving notice in writing to the other parties of his intention to apply to the Court to stay proceedings, apply to the Court accordingly; and if the Court, after hearing such of the parties as desire to be heard, is satisfied that justice is more likely to be done by the suit being instituted in some other Court, it may stay proceedings either finally or till further order, and make such order as it thinks fit as to the costs already incurred by the parties or any of them.

In such case, if the plaintiff so requires, the Court shall return the plaint with an endorsement thereon of the order staying proceedings.

*Application when to be made.*—Every such application shall be made at the earliest possible opportunity, and in all cases, before the issues are settled; and any defendant not so applying shall be deemed to have acquiesced in the institution of the suit."

"18. *Remission of court-fee where suit instituted in another Court.*—Where the Court, under Section 17, stays proceedings and the plaintiff re-institutes his suit in another Court, the plaint shall not be chargeable with any court-fee, provided that the proper fee has been levied on the institution of the suit in the former Court, and that the plaint has been returned by such Court."

"19. *Procedure where Courts in which suit may be instituted subordinate to same Appellate Court.*—Where a suit may be instituted in more Courts than one, and such Courts are subordinate to the same Appellate Court, any defendant, after giving notice in writing to the other parties of his intention to apply to such Court to transfer the suit to another Court, may apply accordingly; and the Appellate Court, after hearing the other parties, if they desire to be heard, shall determine in which of the Courts having jurisdiction the suit shall proceed."

"20. *Procedure where they are not so subordinate.*—Where such Courts are subordinate to different Appellate Courts, any defendant, after giving notice in writing to the other parties of his intention to apply to the High Court to transfer the suit to another Court having jurisdiction, may apply accordingly. If the suit is brought in any Court subordinate to a District Court, the application, together with the objections, if any, filed by the other parties, shall be submitted through the District Court to which such Court is subordinate. The High Court may, after considering the objections, if any, of the other parties, determine in which of the Courts having jurisdiction the suit shall proceed."

(2) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard or of its own motion without such notice, the District Court may, at any stage, transfer any suit or proceeding pending in any Court subordinate to it to another such Court within its jurisdiction.

(3) Where any suit or proceeding has been transferred or withdrawn under Sub-sections (1) and (2), the Court which thereafter tries such suit shall, in the absence of a special direction to the contrary in the case of an order of transfer, proceed from the point at which it was transferred or withdrawn.

---

Sec. 23 [ = S. 21 = *S. 24 (1) and (2)*]

I. 1. Section 25 of the Indian Code of 1882, from which Section 21 of Regulation II of 1065 was taken, was as follows :—

"25. *Transfer of suits.*—The High Court or District Court may, on the application of any of the parties, after giving notice to the parties and hearing such of them as desire to be heard, or of its own motion, without giving such notice, withdraw any suit, whether pending in a Court of first instance or in a Court of Appeal subordinate to the High Court *or District Court*, as the case may be, and *try the suit itself or* transfer it for trial to any other such subordinate Court competent to try the same in respect of its nature and the amount or value of its subject-matter."

2. If the words italicised in the above Section are omitted, then it reproduces Section 21 of Regulation II of 1065. The statement of Objects and Reasons of the 1065 Bill explained the change thus:—"8. Section 25 is so amended as to confine to the High Court the power of transferring suits from one Court to another. This is the present law, and considering the limited extent of Travancore territory, and the comparative facility with which applications may be made to the High Court and the relative rank of the District Courts and Munsiff Courts in this State, it has not been deemed advisable to extend the power to the District Courts. As, under the present constitution of the High Court, it cannot try an original suit, the provision empowering the High Court to transfer the suit to its own file, is omitted."

II. Section 24 (1) and (2) of the present Indian Code, corresponding to Section 23 of the present Regulation is as follows:—

"24. (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage—

(*a*) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(*b*) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) re-transfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under Sub-section (1), the Court which thereafter tries

such suit may, subject to any special directions in the case of an order of transfer, either re-try it or proceed from the point at which it was transferred or withdrawn."

III. 1. In regard to the present Section 23, the Notes on Clauses say :—

"An important change is made in this Section. Under the existing law, the High Court has held itself powerless to transfer any appeal or any other proceeding to itself, and its power has been confined to transferring from one subordinate Court to another subordinate Court. It is felt that the powers of the High Court should not be so circumscribed, when, in obvious cases, transfer to its own files of cases pending in the subordinate Court would be to the manifest advantage of all parties, and to the curtailment of delay and the removal of conflict in the disposal of cases. Such a power exists in criminal proceedings, and there is no reason why it should not exist in Civil cases. In view, however, of the fact, that the High Court does not exercise original jurisdiction, the power to transfer to its own file is restricted to appeal, and other proceedings only, and does not extend to trials of original suits."

2. In the original Bill, the power was given only to the High Court. The Select Committee considered it "expedient to empower District Courts to transfer suits or other proceedings from District Munsiffs' Courts"; and accordingly added Sub-section (2).

3. For Sub-section (3), the original Bill adopted the wording of the corresponding Sub-section (2) of the Indian Code. The Select Committee, however, altered it into the form in which it now stands.

IV. For Form of Notice of application for transfer of a suit to another Court for trial, see Appendix I, Form No. 2.

### Case Law.

1. Section 21 C. P. C., (new Section 23) does not empower subordinate Courts to make any reference to the High Court inviting opinions on questions of law.—

**5 T. L. J.**, *358*.

2. On an application for transfer, the High Court called upon the lower Court to send up a report on the allegations made therein. On the question whether the applicant is entitled to a copy of such report:

*Held.*—The applicant is entitled to such copy as the report is *prima facie* a public document.

It is an elementary principle of law that no man should be condemned unheard, and the hearing of a party implies that he should be allowed reasonable facilities to state his own case and answer that of his adversary. If, in the instance in question, the applicant is denied the opportunity of having access to the Munsiff's letter, he cannot complain. But his prayer for a copy thereof cannot be refused, as such refusal is tantamount to an intimation that the Court, while prepared to hear his view of the case, is not inclined to hear what he may have to say in answer to or explanation of what the Munsiff might have written against him. The Munsiff's letter is not privileged communication addressed to the High Court in his capacity of a departmental subordinate. It is, on the other hand, a statement of facts and opinions showing cause against the rule issued by the High Court to an inferior Court, and as such it is *prima facie* a public document.—

**15 T. L. J.**, *409*.

3. In order that the High Court may exercise the jurisdiction conferred by Section23, the suit or other proceeding must have been properly instituted before any Court.

Under Order XLV, Rule 2, unless the application for the review is made to the Judge who passed the decree or made the order, it cannot be said to have been properly instituted.

The expression "made" contained in the Rule means "presented" and not "moved."

*Institution of Suits.*

Institution of suits

24. Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

---

*Summons and Discovery.*

Summons to defendant.

25. Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed.

Service of foreign summonses.

26. (1) Summonses issued by any foreign Civil or Revenue Court may be sent to the Courts in Travancore and served as if they had been issued by such Courts :

Provided that Our Government have, by Notification in Our Government Gazette, declared the provisions of this Section to apply to such Courts.

(2) Our Government may, by like Notification, cancel any Notification made under this Section, but not so as to invalidate the service of any summons served previous to such cancellation.

---

The application for review presented to a different Judge, therefore, is not in order and cannot be transferred.

The application for review of a judgment presented after the Judge who decided the case has been transferred to another Court cannot, in the exercise of the powers conferred upon the High Court, by Section 23, be transferred to the Court to which the Judge has been transferred (F. B.).—

**44 T. L. R.**, *87*
(=**18 T. L. J.**, *1196*).

---

**Sec. 24** [= S. 44 = *S. 26*]

I. The old Section was as follows :—

"44. Every suit shall be instituted by presenting a plaint to the Court or such Officer as it appoints in this behalf."

II. See Order IV, Rule 1, *Infra.*

III. The Section that followed the old Section 44 has been omitted; and it ran thus :—" 45. The plaint must be distinctly written in the language of the Court : Provided that the plaint may (with the permission of the Court) be written in English; but in such case, a translation of the plaint into the language of the Court shall be filed in Court."

---

**Sec. 25** [= S. 60 = *S. 27*]

See Order V, Rule 1, *Infra*; for Section 60 of Regulation II of 1065.

---

**Sec. 26** [= S. 588 = *S. 29*]

In the place of the words " Summonses issued ... .. in Travancore", the corresponding Section of the old Regulation had the following :—" Summonses issued by a Civil or Revenue Court beyond Travancore may be sent to the Courts within Travancore."

---

Power to order discovery and the like.

**27.** Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,—

(*a*) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(*b*) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(*c*) order any fact to be proved by affidavit.

Summons to witness.

**28.** The provisions in Sections 25 and 26 shall apply to summonses to give evidence or to produce documents or other material objects.

Penalty for default.

**29.** The Court may compel the attendance of any person to whom a summons has been issued under Section 27 and for that purpose may—

(*a*) issue a warrant for his arrest;

(*b*) attach and sell his property;

(*c*) impose a fine upon him not exceeding five hundred rupees;

(*d*) order him to furnish security for his appearance and in default commit him to the civil prison.

---

**Sec. 27** [= ,, = *S. 30*]

See—

Or. XI *Infra.*—Delivery and answering of interrogatories.

Discovery and Inspection.

Or. XII ,, —Admission of documents and facts.

Or. XIII ,, —Production, impounding and return of documents.

Or. XVI.—Summonses to persons to give evidence.

Or. XIX.—Proof of facts by affidavits.

**Sec. 28** [= ,, = *S. 31*]

**Sec. 29** [= ,, = *S. 32*]

See Or. XVI, Rules 10–13, 17 and 21.

*Judgment and Decree.*

**30.** The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow.

Judgment and decree.

---

**Sec. 30** [ = S. 193 = *S. 33*]

I. Section 193 of Regulation II of 1065 corresponds to the new Section 30 and Sub-Rule (1) of Rule 1 of Order XX. Sub-rule (2) of Rule 1 of Order XX corresponds to Section 194 of the old Regulation. The two Sections of the old Regulation were as follow :—

"193. The Court, after the evidence has been duly taken and the parties have been heard either in person or by their respective pleaders or recognised agents, shall pronounce judgment in open Court, either at once, or on some future day of which due notice shall be given to the parties or their pleaders."

"194. A Judge may pronounce a judgment written by his predecessor but not pronounced."

II. **1**. Rule 1 of Order XX is also given below for reference in connection with the case-law :—

"**1**. (1) The Court, after the case has been heard, shall pronounce judgment in open Court, either at once or at some future day, of which due notice shall be given to the parties or their pleaders.

(2) A Judge may pronounce a judgment written but not pronounced by his predecessor."

See also Order XL, Rules 29 and 30.

III. **1**. It is a well-established principle of law that the decision of a case must be in accordance with the pleadings. If, at the final hearing, the Court learns that the case stated in the pleadings is inaccurate, it must either dismiss the suit or allow the plaintiff to withdraw it with liberty in either case to bring a fresh suit.—**7 T. L. R.**, *33*.

**2**. When the plaintiff's claim is found unsustainable, the defence need not be gone into.— **12 T. L. R.**, *177*.

**3**. It is the duty of the Courts to grant such of the reliefs claimed as are admissible upon the admitted or proved facts of a case.— **16 T. L. R.**, *39*.

**4**. The Zillah Judge has in the case not considered all the documentary and oral evidence and his judgment is extremely meagre. He has not discussed the several points and the evidence as he should have done when dealing with an original suit (F. B.).— **1 S. D.**, *44*.

**5**. Where a party is entitled to a relief he should not be asked in the judgment to furnish security before he is allowed, in the case, to realise and take the decree amount. **1 S. D.**, *73*.

**6**. When a judgment has become final, whether right or wrong, it is binding on the parties.— **3 T. L. J.**, *41*.

**7**. The words "amount in suit" occurring in the decretal portion of the judgment go to show that the judge who decided the suit intended to award future interest also which was claimed by the plaintiff, and the decree was wrongly prepared because the wording of the judgment was wrongly interpreted by the officer who prepared the decree. The question before the lower Court was only one for bringing the decree into conformity with the judgment.— **3 T. L. J.**, *160*.

**8**. Under the law, errors in judgment can only be corrected by an application for review or on appeal (Obiter).— **31 T. L. R.**, *61* ( = **5 T. L. J.**, *352*).

**9**. Where the Munsiff did not appear to have given proper consideration to the contentions of the parties as they appeared in the plaint and written statement, his decree could not be supported.— **6 T. L. J.**, *56*.

**10.** "A judgment does not vest in a judgment-creditor any portion of the property of his judgment-debtor. It gives him a right to have the judgment executed, but until execution the property of the judgment-debtor does not vest in the judgment-creditor by the virtue of judgment".— **36 T. L. R.**, *56*.

**11.** A judgment written, but not duly pronounced, is a mere memorandum made by the judge who wrote it, and not a document having the force of a judgment conforming to the requirements of law.

A judgment rendered without jurisdiction is invalid in law (F. B.).— **39 T. L. R.**, *220* (= **13 T. L. J.**, *385*).

**1[illegible]** [illegible] judgment pronounced without the hear[illegible] of final arguments is liable to be set aside as bad in law.— **15 T. L. J.**, *368*.

### Case Law.

**1.** The possibility of the defence turning out to be false is no ground for refusing a fair trial to a defendant who is entitled to full opportunity to prove the defence by any admissible evidence.

A decree passed without a proper trial in the manner contemplated by the Code of Civil Procedure cannot be supported.— **5 T. L. R.**, *76*.

**2.** If, in the opinion of a Judge, a question of fact is immaterial for the decision of a case, the evidence bearing on it ought to be left unconsidered and the question undetermined. But if, on the other hand, it is in any way material—though not directly—the evidence ought to be properly weighed and conclusion distinctly recorded. Indifferent mode of dealing with a question of fact is likely to be prejudicial to the interests of the parties.— **9 T. L. R.**, *107*.

**3.** It is only when a party dies **before** argument and before decree that his death will affect the validity of the decree.— **17 T. L. R.**, *18*.

**4.** Where in a suit the defendant confessed judgment, but died before the judgment was pronounced and his representative objected to the execution of the decree on the ground that the judgment was obtained against a person who was dead at the time of its declaration and in the absence of his representative on record :

*Held*.—There was nothing anomalous or contrary to principle in the delivery of a judgment, drawing up a decree thereon and in executing the same after the death of a defendant, if he has before death confessed judgment.— **17 T. L. R.**, *182*.

Appl.—25 T. L. R., 108.

**5.** A Court will decree a suit, though apparently it is speculative, if it is neither illegal nor immoral.— **19 T. L. R.**, *54*.

**6.** A suit once filed subsists until there is an order of the Court directing it to abate or otherwise giving finality to the litigation by judgment or order; but the mere fact that a plaintiff or defendant dies pending the disposal of the suit does not necessarily make the subsequent proceedings invalid.

The principle of the decision in 17 T. L. R., 182 clearly is that, if the party against whom judgment is given had full opportunity to be and was heard and if the suit had not abated, the absence of the legal representative of a deceased party is not fatal to the validity of the judgment.— **25 T. L. R.**, *108*.

**7.** An order directing a party to pay additional Court-fee ought not to be embodied in a judgment which records findings against him on the merits. Such an order ought to be recorded in a separate proceedings and judgment reserved till the payment is made.

A valid judgment and a binding and final decree cannot be reconsidered by the Court except on a petition for review or an order from a superior Court, and any fresh decree passed, except under these conditions, is a nullity and cannot operate as a bar to the execution of the prior decree which has *ipso facto* become final.

The principle of construing a decree with reference to the judgment is applicable only to those cases where the decree is ambiguous or expressed in extremely vague and general terms.— **26 T. L. R.**, *58* (= **1 T. L. J.**, *150*).

Fol.—31 T. L. R., 61 (=5 T. L. J., 352).

**8.** On revision the High Court ordered in the case, that the District Judge's observations which were not necessary for the disposal of the appeal should be expunged from the record.— **K. P.**, *271*.

**9.** In a suit for redemption of a mortgage, the period fixed for the mortgage had not expired at the date of the suit. The period expired at the hearing of the appeal.

*Held*.—The plaintiff could not get a decree for redemption as the decree must have reference to the state of things existing on date of plaint, and plaintiff was not entitled on date of plaint to get the relief he now claimed.

Judgments and decrees relate to the state of things at the date of suit.— **2 T. L. J.**, *145*.

**10.** It was contended, on behalf of the special appellant that the judgment of the lower Appellate Court was bad in law, because (1) after the appeal has been first heard by the District Judge and taken up for judgment, the District Judge granted the first defendant's petition to be heard afresh and did so without notice to the appellant or his Vakil, and (2) the judgment was written by the Judge after he had been transferred from the Court.

*Held*.—The hearing of a party without notice to the opposite party or his Vakil after the case is taken up for judgment, is at the most, an irregularity which does not affect the jurisdiction of the Court, and is not by itself sufficient ground for reversing a judgment, if as laid down in Section. 547, C. P. C., [new Section 78], the merits of the case are not affected by such irregularity. There is nothing illegal in a Judge writing a judgment after his transfer to another Court, as Section 194, C. P. C., [ =Or. XX, r. 1 (2) ] provides for the pronouncement by one Judge of judgment written by his predecessor in office.— **3 T. L. J.**, *215*.

**11.** The Court below adjourned a case for argument to a day during the mid-summer vacation, actually heard the arguments of the plaintiff's Vakil on two days, one of which was a Sunday, the defendants' Vakil being absent on both these days, and took up the case for judgment without hearing the defendants' arguments, and pronounced judgment before the re-opening of the Court after the mid-summer vacation.

*Held*.—The procedure of the Court below was wrong, and the judgment was not passed according to law.— **4 T. L. J.**, *227*.

Ref.—15 T. L. J., 368.

**12.** It is clear law that, without a petition for review or an order from a superior Court, no Judge has jurisdiction to pronounce a fresh judgment when there is already a valid judgment in the case passed by the Court.— **31 T. L. R.**, *61* (**=5 T. L. J.**, *352*).

**13.** The recital of the admission of the title of the plaintiff's family contained in a judgment is admissible as relevant evidence of the mortgagee's admission of the mortgagor's title.— **36 T. L. R.**, *187* (**= 10 T. L. J.**, *143*).

Rel.—16 T. L. J., 277.

**14.** Where an Appellate Court fully adopts the reasoning and conclusions of the Court of first instance, it is not bound to set out the reasons for its decision with the same fulness as if it was deciding the suit in the first instance or as if it was reversing the first Court's decree.

As regards the contention, in the case, that the evidence in the appeals had not been properly considered by the lower Court, the omission of the lower Court to consider certain material portions of the

evidence had probably affected its finding both on the question of title and possession. In the interests of justice, it was desirable that the evidence should be examined in more detail than had been done. The decree of the lower Court was accordingly reversed and the appeal remanded.—

**13 T. L. J.,** *131.*

**15.** A judgment pronounced after practically shutting out the argument of a party is not a valid judgment under the law. The judgment and the decree of the Munsiff, were reversed and the case sent back for fresh decision after hearing both sides.

Section 193 of the Civil Procedure Code makes it incumbent on the Court, after evidence in the case had been duly taken, to hear both sides either in person or by their pleaders before pronouncing judgment in open Court.

"Omission to pronounce judgment in open Court is in direct opposition to an express provision of the law; and in practice it is highly inconvenient, and deprives the Court and the litigants of a valuable safe-guard against error".— **38 T. L. R.,** *90* (**=13 T. L. J.,** *173*).

Ref.—15 T. L. J., 368.

**16.** The District Judge, who had heard the parties before the midsummer vacation, went to the Court-house on a day during the vacation and pronounced his judgment without previously intimating to the parties that he intended to do so. After judgment was pronounced written notice of the decision was served on the parties.

It was contended before the High Court that the judgment of the District Judge was invalid, inasmuch as the Judge had acted in contravention of the provisions of Section 193 of the Civil Procedure Code, whereby he was bound to pronounce judgment in open Court at once after the case was heard or on a future date notified to the parties.

*Held.*—1. The District Judge had jurisdiction to pronounce judgment during the mid-summer vacation and his having done so in the case under consideration did not *per se* militate against the provisions of Section 193 of the Civil Procedure Code.

2. The practice of Courts did not in effect amount to a rule of law making it obligatory on a judge to abstain from exercising judicial functions during vacation or on public holidays. The very fact that a subordinate Judge is competent, with the sanction of the High Court, to exercise judicial functions when his Court is in recess is indicative of the unbinding nature of the practice itself.

3. The rendition of judgment without giving previous notice of the date to the parties was a mere irregularity which did not vitiate the judgment as it was not shown to have prejudiced the party assailing it. Section 547, Civil Procedure Code, [new Section 78] covers this case.

When it is remembered that a judgment pronounced after the death of a party which takes place subsequent to the final hearing, is nevertheless deemed to be binding on the representatives of that party, it is idle to contend that an error of procedure in the matter of notice is followed by more serious consequences.

The expression 'in open Court' is contradistinguished from the expression 'in camera'. The essence of the former is that the place is commonly accessible to the public, though the Judge may on good grounds and on specific occasions curtail this right of the public. The Civil Courts Regulation authorises the Government to fix places for the holding of Courts. It is reasonable to conclude that a Judge who transacts judicial business at any place so fixed must be deemed to hold Court there and that a judgment rendered at that place in such a manner as to permit the public to have access thereto is a judgment pronounced in open Court (F. B.).—

**39 T. L. R.,** *220* (**= 13 T. L. J.,** *385*).

Ref.—41 T. L. R., 257 ( =16 T. L. J., 29 ).

**17.** The judgment of a Court pronounced eight months after arguments were heard is not one in accordance with law. In pronouncing the judgment after such a long delay, the Judge has acted against the wholesome provisions of Rule 518 of the Civil Courts' Guide, which directs that judgments should be written out promptly when the facts are likely to be fresh in the mind of the Judge. The decree was set aside and the case remanded for disposal after hearing the Vakils on both sides.—

**16 T. L. J.,** ***275.***

Fol.—43 T. L. R., 244
(= 17 T. L. J., 445).
Rel.—17 T. L. J., 769.

**18.** The function of a Court of Appeal is to come to an independent conclusion on the evidence, whatever be the view taken by the trial Court. Only it must always bear in mind, in deciding a point, on which there is a conflict of oral testimony, that it has neither seen nor heard the witnesses, and consequently make due allowance in this respect.

"There are two ways in which one may approach the question of credibility. When the question is whether a witness is speaking the truth or not, light is thrown upon it by the demeanour of that witness in the box, by the manner in which he answers questions, and by how he seems to be affected by the questions that are put to him, and so on. No doubt there, the trial judge has an advantage which cannot possibly be shared by any Appellate Court. But when the views upon credibility are founded upon argumentative inferences from facts which are not disputed, then the Court of Appeal is really in just as good a situation as the Judge of first instance.— **16 T. L. J.,** ***608.***

Rel.—17 T. L. J., 769.

**19.** Judgment requiring consideration may be reserved, but should be declared in reasonable time after date of hearing; otherwise it cannot be said to be one in accordance with law. No hard and fast rule can be laid down as to what the reasonable time is, as it depends upon the nature and circumstances of each case.

In the case, the judgment of the lower Appellate Court was pronounced eight months and ten days after the hearing. Considering the nature and circumstances of the case, it was held, that the time taken was quite unreasonable and that the judgment was accordingly not in accordance with law.— **43 T. L. R.,** ***244***

**(= 17 T. L. J.,** ***445*****).**

Rel.—17 T. L. J., 769.

**20.** Rule 518 of the Civil Courts' Guide requires that after final hearing the judgment should be written and declared promptly when the facts are likely to be fresh in the mind of the judge, the judgment in complicated suit requiring consideration being alone permitted to be reserved for a few days. Where the judgment requires consideration, it may be reserved, but should be declared in reasonable time after the hearing; and no hard and fast rule can be laid down as to what the reasonable time is, as it depends upon the nature and circumstances of each case.

The fact that the Munsiff had elaborately stated his reasoning after discussion of the evidence (which is referred to in more than one place) and which seems to have more influenced the judge in agreeing with the Munsiff's conclusion does not relieve the Judge of his duty to form his own opinion on the evidence and record reasons for his findings. The function of a Court of Appeal is to come to an independent conclusion on the evidence, whatever be the view taken by the trial Court. Where the decision of a case involves issues of fact, and the first Court has gone fully into the evidence and recorded its finding and decision, if the Appellate Court agrees with the conclusions of the Court below, the Appellate Court is no doubt not obliged by law to state in detail the reasons previously recited in which it concurs. But a general and wholesome adoption of the judgment of the Court

*Interest.*

31. (1) In suits for money, no Court shall, in respect of the period antecedent to the institution of the suit, allow in its decree a higher rate of interest than twelve per cent. per annum and the amount adjudged as interest for such period shall not exceed one-half of the principal amount sued for.

Interest.

(2) Notwithstanding anything contained in Regulation I of 1010, where the decree is for the payment of money, the Court may, in addition to the interest awarded under Sub-section (1), decree payment of interest on the principal sum adjudged of such amount as may accrue at a rate not exceeding twelve per cent. from the date of suit to the date of decree.

(3) Notwithstanding anything contained in Regulation IV of 1010, where the decree is for the payment of money, the Court may, in addition to the interest decreed under Sub-sections (1), and (2), decree future interest at a rate not higher than nine per cent. on the aggregate sum adjudged from the date of decree to the date of payment or to such earlier date as the Court thinks fit, provided, however, that the amount of interest accruing from the date of the decree shall not exceed the aggregate sum adjudged.

(4) Where such a decree is silent with respect to the payment of future interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

---

of first instance cannot be regarded as compliance with the law.— **17 T. L. J.**, *769*.

**21.** See also—

Or. IX, r. 6.—**15 T. L. J.**, *368*.
„ XX, r. 4.—**32 T. L. R.**, *235*.

**Sec. 31** [ = S. 204 = *S. 34* ]

I. **1.** Section 204 of Regulation II of 1065 was as follows:—

"204. ***In suits for money, decree may order certain interest to be paid on principal sum adjudged.***—When a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

"*Effect where decree is silent as to further interest.*—Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie, except, in the case of decrees passed before this Code comes into force."

**2.** Section 7 of Regulation IV of 1010 was as follows :—"7. *Rate of interest to be decreed.*—Munsiffs are hereby prohibited from allowing in their decrees a greater rate of interest in any suit brought before them than twelve rupees per cent per annum, but if the interest mentioned in the document be less, Munsifis shall decree accordingly."

II. The Section as framed in the original Bill was as follows :—

"31. *Interest* :—(1) In suits for money, or for grain, no Court shall, in respect of the period antecedent to the institution of the suit, allow in its decree a greater rate of interest than 18 per cent. per annum, and the amount adjudged as interest for such period shall not exceed the principal amount sued for.

Provided that, in the case of money owing to or from bankers, the Court may allow compound interest at rate not exceeding 18 per cent. per annum if there is an express agreement in writing to pay such compound interest, or if there is a commercial usage to that effect.

(2) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

(3) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie."

In regard to the above provision, the Notes on Clauses said :—

"This section makes an important change in the law relating to recovery of interest. The present statutory law consists of remnants of two Regulations passed in 1010 M. E., relating to procedure of Civil Courts. According to the law in vogue, no other than simple interest may be recovered, and no more than 12 per cent. in cases of money can be allowed. By a strict interpretation of the wording of the Section, the High Court have recently held that the amount of interest adjudged cannot exceed half the principal as at date of decree, and not as at date of suit. These provisions regarding payment of interest were passed nearly a century ago, and have been the subject of adverse criticism at the hands of laymen, merchants, and lawyers alike. The existing law makes a difference between loans of money and paddy, as, in the latter case, as much as 20 per cent. may be allowed, and the interest may go up to an amount equal to the principal. Whatever may have been the reason which existed to justify this difference of treatment, there is none now to support the continuance of such treatment. Various devices are resorted to by lenders and borrowers to defeat the existing law.

"An attempt, however, to wholly abrogate this law, and allow complete freedom of contract failed, when steps were taken at no distant past to give effect to the same in the Legislative Council. It is felt that, while complete freedom of contract need not be granted, the restraint now in force must be substantially relaxed. Hence it is proposed to put both money and paddy on the same footing, and allow in both cases the rate of 18 per cent. which is

now allowed in the Jenmi and Kudiyan Regulation. The amount of interest is allowed equal to the amount of the principal, as in the case of paddy. It is also in conformity with the Hindu Law Rule of Damdupat. With the repeal of enactments of 1010, the ground of the recent High Court decision to award as interest a half only of the principal as at date of decree, will disappear, and the decision itself will no longer be law. It will afford some gratification to know that, whatever be the restraints that are put on contract, delay in the disposal of cases will not of itself impose on the successful litigant a possible penalty of loss of interest, as, at present, it must. Courts will be free to adjudge interest from date of suit to date of realisation without any restraint on the amount."

See also Objects and Reasons, Pages 10—13 and 15—17 *Supra.*

Section 7 of Regulation I of 1010, quoted above was repealed, as also so much of Clause 5 of Section 17 of the same Regulation as related to interest for money.—

*See Vol. I, Pp. 1-2.*

III. The Select Committee, in reporting on the Bill, observed in regard to this Section :—

"We do not think it desirable to enhance the maximum rate of interest of twelve per cent. now permitted by law, or to allow Courts to decree as interest before suit more than one-half of the principal. The Court may, however, award any amount that may accrue as interest from the date of suit to the date of decree. We consider it necessary that the maximum rate of future interest may be raised to 9 per cent. and that the maximum amount of interest accruing after decree may be equal to the aggregate amount of the decree. In other respects, we think that Regulations I of 1010 and IV of 1010 may stand as they are."

The Committee accordingly made the necessary changes, and the Section stands now as modified and recast by them.

IV. When the Council was considering the Bill, a motion was made by a Non-official Member to modify Sub-section (2), so that the maximum amount should not exceed twelve per cent., or half the principal amount till the date of the decree. The amendment proposed was that the words "subject to the provisions of Regulations I and IV of 1010" be substituted for the words "Notwithstanding anything contained in Regulation I of 1010."

In opposing the above motion (which finally was lost), the Member, in charge explained the position as follows:—"* * I may point out that, at the time the Bill was introduced, there was great opposition to this Clause, and, out of deference to the wishes of the House, the Select Committee made it as harmless as possible. The first Subsection says that, before the date of suit, half of the principal may be decreed as interest. I dare say it is within the knowledge of the House, especially the lawyer members, that recently there was a Full Bench ruling which said that till the date of decree we can recover only half of the principal by way of interest. In other words, even if the interest had accumulated to half the principal or more on the date of suit, if only the suit had been dragging on —as in the recent case which was pending for six years—the plaintiff should not get any interest for the period of suit however long it may be, although there is no fault on the part of the plaintiff. At any rate, I do not see any reason why the plaintiff should suffer for the delay in the disposal of suits, especially when he is not in the least responsible for the delay. There was much complaint in the Assembly about this particular question. With a view to avoid such complaints, it was decided by the Select Committee that the plaintiff should get interest, not exceeding 12 per cent. from the date of suit till the date of decree. No doubt, we are willing to abide by the old Regulation as regards the interest till the date of suit. I submit, it was in accordance with public opinion and in deference to the

representations in the assembly that it was thus laid down by the Select Committee. Otherwise, the defendant will postpone the evil day for him as much as possible. He will delay the decree as much as possible. It is really very hard that, for no fault of his, the creditor should not get any interest for his money from the date of suit till it is finally decreed by the High Court. I dare say that that was not the sort of impression that the Court had at the time they gave the ruling."

* * *

"I do not see why the plaintiff should be mulcted for the delay caused by the frivolous contentions of the defendant. The plaintiff demands only the money that he had advanced; he has come to the Court in time. Unnecessary and frivolous contentions were raised by the defendant and the disposal of the suit was delayed. Why should the creditor forego his dues for no fault of his? Much capital was made in the Assembly of the delay in the disposal of suits, of the protracted nature of suits, of the trouble given to the creditors by debtors, of the small rate of interest allowed by the Court, and of all the inconveniences and hardships of the creditors. The creditors, as all of us are aware, are not able to get money from the Bank even at 6 per cent. It is the existing law on the subject that is mainly responsible for the delay in suits and the delay in execution proceedings. The defendants are tempted to drag on, since they will thereby get time during which they will not be forced to pay interest. All these facts were pointed out in the representations in the Sri Mulam Popular Assembly. Regulations I of 1010 and IV of 1010 were interpreted by the High Court to mean that they did not empower the Courts to award any interest for the period between the date of suit and the date of decree. It is this that is mainly responsible for the delay experienced in the Execution Courts and the delay in the disposal of suits. The provision as settled by the Select Committee will deter the defendant from raising unnecessary and frivolous contentions and from delaying the disposal of suits, because delay will mean a pinch in his purse. Therefore, once we take away this provision from the Bill as settled by the Select Committee, we take away the most essential requisite for prompt realisation of decree debts and prompt disposal of suits".— *L. C. P., dated 13-2-1925.*

V. The corresponding Section 34 of the British Indian Code is as follows :—

"34. ***Interest.***—(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

"(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie".

VI. 1. "When a man gets a decree for money, it does not necessarily follow that he ought to get interest as well up to the date of the satisfaction of the decree. The determination of the question depends upon the facts of each particular case. A Court, before making a decree for money, will consider what was the rate of interest charged in the bond, whether the creditor took undue advantage of his position, whether the bond put in suit was the last of a series of renewals, &c., and it will then be determined once for all whether it will allow interest subsequent to the date of the suit".

"Regulations I and IV of 1010 make twelve per cent. the maximum rate of interest, and I do not see why that rate should be made the normal rate of interest by our Courts. That may be the ordinary market rate of interest in the country, but that ought not to be the rate chargeable on judgment-debt, which is the best security for money which a creditor can have" (*Per Ramachandra Aiyar, C. J.*).—

**2 T. L. R. App.,** *1.*

**2.** The cases bearing on "Interest" whether in money or in grain, are all brought together and the decisions summarised below. Also, the Sections, still in force, of Regulations I and IV of 1010 are reproduced :—

*Regn. I of 1010.—"Sec. 17 (Clause 5).* In decrees on suits, the Munsiff shall allow in the decree the interest that may be due from the period the suit may have been instituted to the day on which the decree shall be passed ; but he is prohibited from decreeing on account of interest a sum exceeding the principal, if the claim be for paddy or grain, and only one-half exceeding the principal, if for money".

[So much of Section 17, Clause 5, as relates to interest for money repealed by Regn. VIII of 1100.]

*Regn. IV of 1010.*—"Sec. 21. In decrees on Civil suits, the interest must be charged on the principal from the date of the decree to the day of its execution, provided the interest in money does not exceed half the amount of the principal, and if in grain, the interest demanded must not exceed the value of the principal".

[So much of Section 21, as relates to interest for money, repealed by Regn. VIII of 1100.]

VII. For Form of simple money decree, see Appendix D, Form No. 2.

### Case Law.

**1.** Interest on arrears of Michavarom is awardable.— **9 T. L. R.,** *204.*

**2.** Section 204, C. P. C., prohibits further interest being awarded in execution, when the decree is silent on the matter.— **10 T. L. R.,** *48.*

**3.** Interest due under a hypothecation bond is a charge on the property hypothecated, the hypothecation being a security both for principal and interest.—

**10 T. L. R.,** *83.*

**4.** Interest is awardable on arrears of rent.— **11 T. L. R.,** *215.*

Ref.—3 S. D., 82.
Fol.—16 T. L. R., 45.
23 T. L. R., 63.

**5.** Section 204, C. P. C., must be read with the old usury laws expressly saved by the schedule attached to the Code (old), and it cannot be held to be an authority for awarding interest at a higher rate than twelve per cent.

The reduction of interest from date of decree to six per cent. was warranted by the circumstances of the case, the plaintiffs having exacted interest at more than the legal rate, and also levied compound interest. The award of future interest is left to the discretion of the Court.—

**12 T. L. R.,** *186.*

Fol.—18 T. L. R., 183.
Ref.—36 T. L. R., 183
( = 10 T. L. J., 181).

**6.** In a suit by a Jenmi, under the Royal Proclamation to recover from his Kanapattom tenant arrears of michavarom and customary renewal fees with interest thereon :

*Held.*—The tenant who defaults to make payments on the due dates must pay interest thereon.— **13 T. L. R.,** *185.*

Fol.—16 T. L. R., 45.
Dist.—44 T. L. R., 32
(=18 T. L. J., 471).

**7.** In suits for money, only six per cent. may be allowed, though the maximum fixed is higher.— **15 T. L. R.,** *17.*

8. When Michavarom is set off, i. e., when it is deducted from the mortgage amount year after year as it fell due, no interest can be taken into calculation.—
**18 T. L. R.**, *91.*

9. Any contract as to interest having the effect of contravening the express provisions of law cannot be enforced by the Courts.— **18 T. L. R.**, *133.*

Fol.—2 T. L. J., 263.

10. *Held* (by the Full Bench, Govinda Pillay, J. dissenting).—In a suit by the plaintiffs for recovery of the amount (including principal and interest at 15 per cent. per annum) found due on a certain date, on which date the debtors had signed a receipt in plaintiff's account books stating—"We shall repay the sum we borrow with interest at 15 per cent." followed by the entry of the amount then found due by way of principal and interest as above calculated, the said receipt was a bond superseding the prior causes of action and creating a new cause of action for the said amount as from the date of the said receipt. The plaintiffs were entitled to realise the said amount with interest on the same at 12 per cent. per annum from the date of the receipt till date of suit and at 6 per cent. per annum thereafter.

*Per Govinda Pillai, J.*—The receipt was merely an acknowledgment and not a bond creating a new cause of action as the same was unsupported by consideration and the causes of action for the several loans arose on the respective dates when such loans were advanced.— **23 T. L. R.**, *17.*

Ref.—31 T. L. R., 219
(= 5 T. L. J., 441).

11. In a suit by the foreman of a paddy Chitty to recover from a defaulting prized subscriber the whole of the future subscriptions with interest on the same at the rate of 50 per cent. per annum as agreed to in the Chitty security bond executed by the said subscriber when the prize amount was drawn:

*Held.*—The foreman was entitled to recover the amount. On the principle of *stare decisis* the contract rate of interest, though excessive, had to be allowed, as the Courts had under the existing law no power to reduce such rates so far as paddy transactions were concerned.— **23 T. L. R.**, *100.*

12. Suit between traders for balance due on transactions, with interest. The Judge found that there was no agreement to pay interest.

*Held.*—Unless mercantile usage or implied agreement by course of conduct is proved, interest should not be allowed on sums due on dealings, if there is no agreement or written demand claiming interest (F. B.).— **24 T. L. R.**, *49.*

Dist.—26 T. L. R., 63.

13. According to Sec. 82 of the Negotiable Instruments Regulation, interest at 6 per cent. is payable on demand pronotes only from the date of the maturity of the pronotes, *i. e.*, from the date of actual demand.
**25 T. L. R.**, *239.*

14. A landlord is entitled in law to claim interest on arrears of pattom (F. B.).—
**26 T. L. R.**, *63.*

15. The provision in a Chitty security bond to pay interest at the rate of twelve per cent. even after the date of the decree to the date of realisation should not be given effect to, merely on the ground that the obligor had voluntarily assented to it by executing the contract. Section 204, C. P. C., vests in Courts the discretion to fix such a rate as may be deemed reasonable, on the sum adjudged, from the date a suit comes into the Court to the date of payment, and such discretion cannot be permitted to be fettered by any private contract between the parties to the suit (F. B.).—
**27 T. L. R.**, *158.*

Ref.—38 T. L. R., 283
(= 12 T. L. J., 200).
42 T. L. R., 447
(= 17 T. L. J., 134).

**16.** In a suit for settlement of accounts among partners, each partner is allowed interest on the amount advanced by him. The absence of any express contract for payment of interest is not fatal to the claim for interest.— **1 S. D.**, *64.*

**17.** Under Section 204, C. P. C., future interest at the contract rate may be allowed up to date of decree, and the Court rate of 6 percent. thereafter.— **2 S. D.**, *188.*

**18.** The plaintiff, a contractor, gave a sub-contract to the defendant and advanced money. There was no specific provision for interest between them. The defendant failed to supply materials for the amount he received from the plaintiff.

*Held.*—Where there is a breach of contract, interest is awardable as damages, even though there is no specific provision for payment of the same. The rate of interest may be fixed at 6 per cent. per annum (F. B.).— **3 S. D.**, *66.*

Ref.—42 T. L. R., 465
( = 16 T. L. J., 387).

**19.** In a suit for arrears of rent by the landlord against his tenant, the former claimed interest on each instalment of the arrears as it fell due and he deducted from the premium in his hands barred arrears of rent. The defendant who was paying tax for the plaintiff claimed interest on his payments.

*Held.*—Interest is always claimable on arrears of rent. The fact that the premium is left in the hands of the lessor without interest is no reason for disallowing the claim for interest.

Interest on Government tax paid by the lessee is allowable, as an equitable claim. It must be allowed by the lower Court in execution at the same rate at which interest is allowed to the plaintiff.—**3 S. D.**, *82.*

**20.** Under Article 109 of the Limitation Regulation a suit for money due under a hypothecation deed should be brought within 12 years of the date when the principal becomes due.

When the bond itself has become barred, the right to sue for interest also is extinguished, the mere payment of interest in the interval not having the effect of an acknowledgment under Section 20, of the Limitation Regulation for want of a receipt in writing and signed by the party obliged.— **3 S. D.**, *96.*

**21.** In a suit on a hypothecation, the lower Court gave a decree for plaintiff with future interest at 12 per cent. per annum. Thereupon the defendants appealed as regards the rate of future interest.

The award of future interest and the rate thereof rest in the discretion of Courts. In this case, 9 per cent. per annum will be allowed, that is, the rate provided in the hypothecation.— **K. P.**, *566.*

**22.** In a suit for recovery of arrears of Michavarom, &c., with interest at 20 per cent. the lower Court allowed only 18 per cent. as contended by defendants.

*Held* (on appeal by plaintiffs).–(1) The ordinary rate of interest for paddy is 2 per 10.

(2) Where there is a contract the contract rate should be allowed:

(3) The lower Court's decree should be modified by allowing among other things interest at 20 per cent.— **K. P.**, *567.*

Not fol.—6 T. L. J., 425.
Fol.—8 T. L. J., 116.

**23.** When the contract was to pay interest at more than 12 per cent. per annum, and the amount paid as interest before date of suit was shown in the plaint to have been appropriated at the rates of 15 per cent. and 18 per cent. as agreed to between the parties;

*Held.*—The debtor cannot seek to reopen the accounts, and the creditor was entitled to make such appropriation at any time before suit.— **1 T. L. J.**, *377.*

Fol.—31 T. L. R., 219
( = 5 T. L. J., 441).
Ref.—17 T. L. J., 19.

**24.** The plaintiff sued the defendant for money on an agreement by the latter that he would pay monthly Rs. 5, as long as he had in his hands a sum of Rs. 250 belonging to the plaintiff. The suit was for recovery of arrears of such monthly dues. The Munsiff threw out the suit on the ground that it was an illegal agreement.

*Held.*—The agreement was to pay interest at 24 per cent. per annum. Even though the rate of interest fixed by the parties was higher than the rate sanctioned by law, there was no objection to awarding the lawful rate or any lesser rate at the discretion of the Court. The Munsiff's reason of illegality did not therefore warrant the dismissal of the suit.— **2 T. L. J.,** *263.*

**25.** The plaintiff had agreed with the defendant to pay interest on moneys borrowed at more than 12 per cent. per annum. The plaintiff had paid interest at the contract rate, and the money paid had been appropriated towards interest. In suing for settlement of accounts and recovery of money, the plaintiff alleged that the contract to pay more than 12 per cent. interest was illegal and prayed that moneys paid by him in excess of 12 per cent. must be refunded to him. On the question being referred to the Full Bench:

*Held.*—Section 7 of Regulation I of 1010 did not make the charging of a higher rate of interest, than 12 per cent. illegal but unenforceable by suit. The payment at the excess rate was voluntarily made, and the defendant could not be compelled to refund.— **31 T. L. R.,** *219* (= **5 T. L. J.,** *441*).

**26.** When a usufructuary mortgagee who is directed to enjoy the usufruct of the property in lieu of interest on his mortgage amount is kept out of possession by the mortgagor, whatever may be the equities between the mortgagor and the mortgagee in regard to the interest on the mortgage amount, he (the mortgagee) can have none as against a subsequent encumbrancer who is not found to have fraudulently combined with the mortgagor to keep the prior mortgagee out of possession; and hence the latter is entitled to priority over the subsequent encumbrancer only in respect of the principal amount secured by the first mortgage and not in respect of the interest on the same.— **6 T. L. J.,** *460.*

**27.** "Mesne profits" does not as a matter of law include also "interest on mesne profits." The decree-holder, therefore, is not entitled as a matter of law to get interest on mesne profits, where the decree sought to be executed does not provide for such interest.— **7 T. L. J.,** *8.*

**28.** In a suit for recovery of Rs. 521-14 as principal and Rs 531-21-0 as interest due on two hypothecation bonds executed by the defendants, the Munsiff gave a decree for the principal and interest amounting to only one-half of the principal. On appeal against the decree disallowing a portion of the interest, it was contended for the plaintiff that the prohibition contained in the latter part of Clause 5 of Section 17 of Regulation I of 1010, but limited the amount awardable as interest between the date of suit and the date of decree, and not the amount awardable on account of interest that had accrued prior to date of suit.

*Held* (Overruling the contention).—The latter part of Clause 5 of Section 17 of Regulation I of 1010 related not merely to the interest awardable between the date of suit and the date of decree, but to all interest whatsoever up to date of decree, and therefore, the Munsiff's judgment refusing more than *Aravasi* interest was right.— **33 T. L. R.,** *234.*

Fol.—35 T. L. R., 146 (= 9 T. L. J., 239).
Ref.—16 T. L. J., 326.

[Note the change made by the new Code.]

**29.** The stipulation to pay interest at the customary rate is an agreement to pay interest in the case of money loans at 12

per cent. per annum and in the case of paddy loans, at two per ten or 20 per cent.—
**8 T. L. J.**, *116*.

Ref.—42 T. L. R., 465
( = 16 T. L. J., 387 ).

44 T. L. R., 32
( = 18 T. L. J., 471 ).

**30.** Under Section 17, Clause (5), of Regulation I of 1010, not more than half the principal amount can be allowed by the Courts as interest up to the date of the decree,—which clearly indicates that the interest accruing due during the pendency of the suit, *i. e.*, between date of suit and date of judgment is also to be included in decreeing the moiety which is prescribed as the maximum limit in money transactions. When such moiety has accrued due at the date of the plaint itself and has been decreed by the Court, no interest from date of suit up to date of decree can be further decreed. Under Section 21 of Regulation IV of 1010, the interest that can be allowed from the date of the decree up to the date of the execution of the decree, *i. e.*, the date when the decree-holder realizes the amount due to him under the decree, shall not, in money transactions, exceed half the principal.— **35 T. L. R.**, *146*
(=**9 T. L. J.**, *339*).

Fol.—14 T. L. J., 1.
Ref.—16 T. L. J., 326.
17 T. L. J., 628.

[ See new Section 31. ]

**31.** The plaintiff instituted the suit for the balance amount due to him from the defendant on account of provisions supplied to, and contract work executed for, the defendant by the plaintiff. The plaintiff also claimed interest on the previous month's balance, setting up an express agreement to pay such interest.

It was found that the agreement to pay interest was false, and that there was no demand by the plaintiff of the amounts due to him.

It was contended for the plaintiff in appeal that he was entitled to get interest in the shape of damages.

*Held.*—The claim for interest was unsustainable.

*Per Sesha Aiyer, J.*—*Prima facie* interest on the price of goods sold and delivered is not payable. Interest may, of course, be payable by agreement, express or implied. An implied agreement may be deduced either from the course of dealings between the parties or from usage of trade. There is no rule of law authorising the allowance of interest as damages for the detention of a debt. In the present case, there was no agreement that the price of the goods sold should be paid on a day certain. There was no demand for the price made. There was no agreement for interest. There was no intimation that interest would be charged beyond a period of credit. And there was nothing in the course of the dealings between the parties to suggest that the dealings were intended to carry interest. In these circumstances, the claim for interest must be disallowed (F. B.).—
**10 T. L. J.**, *341*.

**32.** Where a hypothecation bond contained a stipulation to pay interest at 9 per cent. per annum on certain fixed rates and, in default to pay on those dates, to pay interest at 12 per cent. per annum from the date of the bond.

*Held.*—The provision for the enhancement of the rate of interest with effect from the date of the bond was a penalty that should be relieved against. But as the enhanced rate was only 12 per cent. per annum, the plaintiff might fairly be awarded interest at that rate by way of compensation from the date of the last payment till date of suit.
**35 T. L. R.**, *206*.

**33.** The suit was for the principal and the interest due on a hypothecation deed which stipulated (*a*) that interest at 1 per cent. per mensem should be paid on the principal at the expiry of every year, and (*b*)

that, if default was made in the annual payment of interest, interest on the amount so due should be paid at one per cent. per mensem.

The Lower Court disallowed the claim for interest on interest, relying on Section 7 of Regulation I of 1010.

*Held.*— The plaintiff was entitled to charge interest at 12 per cent. per annum on every year's arrears of interest. The object of the parties, as seen from the terms of the hypothecation deed, appeared clearly to have been to treat the amount of interest in arrears at the end of every year as an ascertained debt and to charge interest on such amount. Interest allowed was not allowed on *interest as such,* but on an amount which both parties had agreed to treat as a principal debt by itself.

The larger question whether interest could be charged on *interest as such* did not arise for determination under the terms of the hypothecation bond by which the parties were bound (F. B.).—

**36 T. L. R.,** ***245***
**(=10 T. L. J.,** ***367*****).**

Ref.—16 T. L. J., 326.

**34.** There is no rule of law obliging the Court to allow interest on mesne profits. It is a matter for the discretion of the Court, upon consideration of the facts, whether to allow interest or not.—

**38 T. L. R.,** ***39***
**(=12 T. L. J.,** ***72*****).**

**35.** When the decree does not provide for interest, it is not competent to the executing Court to add an order for payment of interest in the course of execution.—

**38 T. L. R.,** ***219***
**(=12 T. L. J.,** ***46*****).**

**36.** The plaintiffs executed a mortgage deed in favour of the 1st defendant, directing him, among others, to discharge a decree debt. He however paid only Rs. 215 out of Rs. 700 which was the amount recited in the deed.

Plaintiffs sued to set aside the mortgage deed and to recover as damages the mesne profits from the mortgaged property.

*Held.*—The damages awardable in a case like this will be represented by interest at a fair rate on the unpaid mortgage amount, and not the amount of mesne profits from the property for the period the mortgagee was in possession.— **38 T. L. R.,** ***311***
**(=12 T. L. J.,** ***299*****).**

Ref.—42 T L. R., 465
(=16 T. L. J., 387).

**37.** Seven Parahs of paddy per 1,000 chuckrams which works out at the rate of nearly 10 per cent. per annum is a reasonable rate of interest to be allowed on the Kanom amount in North Travancore.—

**13 T. L. J.,** ***330.***

Ref.—16 T. L. J., 354.

**38.** Though the provision in a bond for enhanced interest is penal and not enforceable, reasonable compensation for default can be awarded under the terms of Section 74 of the Contract Act.— **14 T. L. J.,** ***136.***

**39.** When a decree awards interest after decree on the aggregate sum made up of the original principal and the interest due till date of decree, such aggregate sum has thereafter to be regarded as the principal sum for purposes of calculating interest payable after decree and interest up to a moiety of such aggregate sum is claimable.

The term "principal" means money on which interest is paid.— **16 T. L. J.,** ***326.***

**40.** Eight Parahs of paddy per 1,000 puthens provided as rate of interest in Kanom deed is not excessive.—

**16 T. L. J.,** ***354.***

**41.** When interest is claimed as damages, unless special damages are set up and proved, only six per cent. should be awarded.— **42 T. L. R.,** ***465***
**(=16 T. L. J.,** ***387*****).**

**42.** In procedural laws, retrospective effect should not be given in case the application of the new procedure will prejudice

rights established under the old. But the right to costs or future interest cannot be said to be a vested right. In this case, the defendants who, if at all, should be taken to be prejudicially affected could not be said to have any right as regards the extent to which the interest or costs could be decreed against them. The award of future interest and costs is a matter within the discretion of the Court. In this view, the argument that the adoption of the later statute in matters relating to future interest would prejudicially affect the defendants could not have any force.

The proceedings in appeal are but a continuation of the suit and the decree in appeal is the decree in the suit. As such, it would be competent to the High Court to invoke the aid of Section 31 in case the peculiar circumstance of the case warrant the award of the maximum limit allowed thereunder as regards future interest. It has however to be noticed that the provisions of Section 31 are directory and not mandatory (F. B.).— **17 T. L. J.,** *229.*

**43.** Section 31, Clause (2), empowers the Court to decree interest only on the principal sum adjudged from the date of the plaint to that of the decree. The lower Court was, therefore, wrong in allowing interest upon the aggregate amount due towards principal and interest up to the date of the plaint.— **17 T. L. J.,** *393.*

**44.** Section 21 of Regulation IV of 1010 is imperative and Civil Courts have no authority to pass any orders, the effect of which, either directly or indirectly, will be to nullify the beneficial provisions of the above Regulation. Even where the decree-debtor has entered into an undertaking in the course of the execution proceedings, which has no doubt obtained the sanction of the Court, that circumstance will not entitle the decree-holder to realise amounts in terms of the new undertaking, if, by so doing, the express provisions of the said Regulation, become a dead letter.— **17 T. L. J.,** *623.*

**45.** The trial Court had allowed first defendant only the principal (paddy) and an equivalent amount towards interest up to date of decree, presumably, under Section 17, Clause (5), of Regulation I of 1010 which was in force on the date of his decision. But he had not made any provision in the decree for interest after date of decree till date of deposit which he could have awarded under Section 204. The amount realisable on this account could not, as laid down in Section 21 of Regulation IV of 1010, exceed one-half of the principal amount. The omission to make a provision herefor may be taken to be a refusal to award the same in exercise of the discretion vested in the Court under Section 204. But, in the nature of the peculiar facts of the case, it could not be said that future interest could, with propriety, have been refused. Nothing was also awarded towards interest between date of plaint and date of decree on the quantity of paddy accrued due on date of plaint and directed to be deposited. This too was but proper in the light of the provisions in Section 17 (5) of Regulation I of 1010. The direction to deposit the paddy in kind or its equivalent in money calculated at the nirak rate of paddy on date of suit, made presumably under Section 203 [Or. XX, r. 10] held applicable in such cases in 40 T. L. R., 181 also seemed to be proper. Under the circumstances, the interest awardable after date of decree till date of realisation could be only on the value of the amount of paddy received as principal.— **17 T. L. J.,** *793.*

**46.** A prized subscriber to a Chitty is, no doubt, entitled, if he so chooses, to call upon the foreman to retain in his hands such portion of the prize amount as may suffice to cover the future instalments of the Chitty and to pay him the balance. But the initiative in the matter should be taken by the subscriber. Where the subscriber has only been demanding the whole amount offering security and the dispute between the parties has been regarding its

*Costs.*

Costs.

32. (1) Subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing,

(3) The Court may give interest on costs at any rate not exceeding six per cent. per annum, and such interest shall be added to the costs and shall be recoverable as such.

---

sufficiency, the subscriber cannot, when the security is found insufficient, turn round and demand payment of the excess with back interest. It is only after he informs the foreman that he elects that course, that the foreman can be held liable for interest.— **17 T. L. J.**, *870*.

**47.** The words "date of the decree" found in Section 21 of the Interest Regulation, IV of 1010, read in the light of Section 17, Clause 5, of Regulation I of 1010 can only mean the date of the original decree and of the appellate decree.—
**44 T. L. R.**, *24*
( = **18 T. L. J.**, *68* ).

**48.** To the question whether the decree-holder can claim more than half of the compensation under the Land Acquisition Regulation, by way of interest :

*Held.*—In view of the express provisions for the payment of interest in Section 31 of the Land Acquisition Regulation, the Section could not be said to be controlled by the provisions of Regulation I of 1010.— **44 T. L. R.**, *30*
( = **18 T. L. J.**, *254* ).

**49.** The usual rate of interest awardable on paddy loans is 20 per cent. per annum. The Thiruppuvarom dues have to be treated as debts. As such, there is no reason why the claim, in the case, of interest at 18 per cent. thereon which is less than the usual customary rate for loans should not be awarded.— **44 T. L. R.**, *32*
(= **18 T. L. J.**, *471* ).

**50.** Ordinarily, when decrees award "future interest," the expression should be taken to mean interest for a period after the date of the decree.— **18 T. L. J.**, *772*

**51.** See also—

Or. II, r. 2.—**14 T. L. R.**, *88*.
**16 T. L. R.**, *91*.
Or. XXI, r. 89.—**17 T. L. J.**, *853*.
Or. XXIII, r. 3.—**36 T. L. R.**, *183*
(=**10 T. L. J.**, *181*).
**42 T. L. R.**, *289*
(=**16 T. L. J.**, *186*).

---

**Sec. 32** [ = Ss. 213-215 and 217 = *S. 35* = En. Or. 65, r. 1 ]

I. **1.** The new Section reproduces Section 35 of the Indian Code.

**2.** Sections 213, 214, 215 and 217 of Regulation II of 1065 are given below for reference,

"213. *Costs of applications.*—When disposing of any application under this Code, the Court may give to either party the costs of such application, or may reserve the consideration of such costs for any future stage of the proceedings."

"214. *Judgment to direct by whom costs to be paid.*—The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion."

"215. *Power of Court as to costs.*—The Court shall have full power to give and apportion costs of every application and suit in any manner it thinks fit, and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power:

Provided that, if the Court directs that the costs of any application or suit shall not follow the event, the Court shall state its reasons in writing.

Every order relating to costs made under this Code and not forming part of a decree may be executed as if it were a decree for money."

"217. *Payment of costs out of subject-matter.*—The Court may direct that costs be paid out of, or charged upon, the subject matter of the suit."

II. *Subject to such conditions......prescribed.*—The following Rules deal expressly with costs:—Order XI, Rule 3 (Costs of interrogatories; Order XXIV, Rule 4 (Cost on payment into Court): Order XXXIV Rule 3 (Costs in interpleader suits).

III. (1) Rule 1 of Order LXV of the Rules of the Supreme Court, 1883, is as follows:—

"1. *Costs to be in the discretion of the Court.*—Subject to the provisions of the Acts and these Rules, the costs of and incident to all proceedings in the Supreme Court, including the administration of estates and trusts shall be in the discretion of the Court or Judge; Provided that nothing herein contained shall deprive an executor, administrator, trustee or mortgagee who has not unreasonably instituted or carried on or resisted any proceedings, of any right to costs out of a particular estate or fund to which he would be entitled according to the Rules hitherto acted upon in the Chancery Division: Provided also that where any action, cause, matter, or issue is tried with a jury, the costs shall follow the event, unless the Judge by whom such action, cause, matter, or issue is tried, or the Court, shall, for good cause, otherwise order".

(2) Section 5 of the Supreme Court of Judicature Act, 1890, is as follows:—

"5. *Costs.*—Subject to the Supreme Court of Judicature Acts, and the Rules of Court made thereunder, and to the express provisions of any Statute, whether passed before or after the commencement of this Act, the costs of and incident to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the Court or Judge, and the Court or Judge shall have full power to determine by whom and to what extent such costs are to be paid".

IV. In the British Indian Code, Act IX of 1922 has added the following Section (35-A) providing for payment of costs by way of compensation in cases of false or vexatious claims and defences:—

"35-A. *Compensatory costs in respect of false or vexatious claims or defences.*—(1) if in any suit or other proceeding, not being an appeal, any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court, if the objection has been taken at the earliest opportunity and if it is satisfied of the justice thereof, may, after recording its reasons for holding such claim

or defence to be false or vexatious, make an order for the payment to the objector, by the party by whom such claim or defence has been put forward, of costs by way of compensation.

"(2) No Court shall make any such order for the payment of an amount exceeding one thousand rupees or exceeding the limits of its pecuniary jurisdiction, whichever amount is less: * *

Provided further, that the High Court may limit the amount which any Court or class of Courts is empowered to award as costs under this Section.

"(3) No person against whom an order has been made under this Section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.

"(4) The amount of any compensation awarded under this Section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence."

**Case Law.**

1. Plaintiff sued in ejectment to recover a small piece of property, and obtained a decree, but without costs, in the Court of first instance. He appealed to the lower Appellate Court on the question of costs and was successful.

*Held.*—In a special appeal from the last decree it was not competent to the defendant to re-open the case on the merits.— **2 T. L. R.**, *8.*

2. The absence of demand may be a ground for refusing costs of the litigation if the defendant (Sirkar in the case) deposited in Court before the hearing of the suit the amount admittedly due.— **4 T. L. R.**, *84.*

3. No appeal lies against the order refusing to take security from the plaintiff for costs.— **5 T. L. R. App.**, *9.*

4. As the first plaintiff in the case had not spoken truth on some points and as the plaintiff's Vakil attempted to introduce new pleas in appeal inconsistent with the case originally set up in the Court below, the award to plaintiffs of the costs of the appeal shall be refused.— **5 T. L. R.**, *116.*

5. The lower Court refused plaintiff his costs on the amount awarded by it, and this refusal was one of the grounds of the appeal. There was no reason why the plaintiff who had succeeded in establishing his claim, should suffer in costs. Costs therefore would be awarded him throughout on the amount decreed.— **5 T. L. R.**, *120.*

6. An Appellate Court is fully competent to make any order as to costs it may think fit, notwithstanding that no regular appeal or objection had been filed against the lower Court's order as to costs.— **6 T. L. R.**, *13.*

7. Where parties on the same side retain each a separate pleader, the other party, if he loses, may be charged with the fees of each of the pleaders if the interests of the parties are distinct, but the assessment of the fee should be on the value of the claim put forth by each party, when such value is less than the whole value of the suit, and not necessarily on the aggregate value of the suit.— **6 T. L. R.**, *37.*

8. Who is mostly to blame for the litigation,—whether plaintiff or defendant—is the chief point to be considered in the award of costs. That the costs should be saddled on him who, without good grounds, occasioned the litigation, is clear.— **7 T. L. R.**, *66.*

9. The suit as against first defendant having been dismissed, the costs of plaintiffs should not have been saddled on that defendant. He is exempted from liability to pay plaintiffs' costs.— **8 T. L. R.**, *120.*

10. In allowing the appeal, no order as to the costs of the proceedings was made as the point on which the appellant succeeded was for the first time taken before the High Court.— **8 T. L. R. App.**, *12.*

**11.** As plaintiffs were allowed to sue and appeal to the High Court *in forma pauperis*, they should not be saddled with the defendants' costs of the appeal.—

**10 T. L. R.,** *151.*

**12.** As the point on which the appellant succeeded had not been urged in the Court below, each party should bear his own costs throughout.— **11 T. L. R.,** *92.*

**13.** In reversal of the original decree, the plaintiffs' suit was dismissed with costs in the High Court to second defendant: the parties to bear their own costs in the lower Court, as the second defendant set up an untrue plea in that Court.—

**11 T. L. R.,** *139.*

**14.** The appeal was unsustainable and was dismissed, but without costs, as the question of law raised in the case was a new one.— **12 T. L. R.,** *39.*

**15.** The assignment by one judgment-debtor to another of the portion of the decree which related to costs in respect of which there was joint liability was invalid under the provisions of Clause (*b*) of the Proviso to Section 225 of the Civil Procedure Code [ = Order XXI, r. 14 ]. The assignee could not be allowed to enhance the liability of his co-defendants in the matter of costs, under colour of assignment.—

**12 T. L. R.,** *182.*

**16.** The award of costs is a matter entirely left to the discretion of the Court deciding the suit, and unless the discretion is shown to have been very arbitrarily exercised, an Appellate Court should not interfere with such discretion (F. B.).—

**13 T. L. R.,** *200.*

**17.** As the objection on which the dismissal of the suit was based was not taken up by the defendants in the lower Court, the parties should suffer their own costs in that Court, and the plaintiff should pay the 2nd defendant's costs in the High Court and bear his own (F. B.).—

**14 T. L. R.,** *39.*

**18.** In the case, it was held that the defendants were responsible to the Government who appointed them, if there was any accountability on their part, and not to the plaintiff. As this point was taken by the High Court of its own motion, the parties will bear their costs throughout.—

**14 T. L. R.,** *57.*

**19.** There being no difference in principle between a 'compromise' and a 'confession of judgment', the Vakil's fees under the Vakils Regulation of 1040 would be one-fourth if the confession is made before all the requisite pleadings shall have been filed, and one-half, if after.—

**14 T. L. R.,** *200.*

Fol.—18 T. L. R., 72.

**20.** Whenever proportionate costs are decreed, it is only the court-fees paid on the plaint or appeal memorandum and the Vakil's fee that should be apportioned. The other costs should be borne by the parties who have incurred them, unless the judgment gives distinct instructions as to the apportionment of all or any of them (F. B.).— **14 T. L. R App.,** *21.*

**21.** As regards costs in the case, the plaintiff appears to have made a written demand for the money before the institution of the suit and the defendant did not pay the money into Court until after the decree. The fact that the defendant admitted the claim does not absolve him from liability for costs incurred by the plaintiff in consequence of the defendant's neglect to discharge the debt, and the decree should award the plaintiff the costs in proportion to the claim allowed.—

**15 T. L. R.,** *17.*

**22.** Award of costs is peculiarly with the discretion of the Court deciding the case. Unless it is clearly shown that the discretion was wrongly exercised, no appellate Court will interfere with the award.— **15 T. L. R.,** *33.*

**23.** The plaintiffs having virtually disobeyed the lower Court's order, they should

pay the respondent's costs in the High Court.— 15 T. L. R., *118*.

**24.** The District Judge dismissed a pauper suit on the ground that the plaintiff, a resident in Travancore, failed to furnish security for the costs of the defendants as directed by the Court.

*Held.*—The order of the Judge was illegal as there is no law for demanding security for costs from residents in Travancore and as Section 354 of the Civil Procedure Code [ = Or. XXII, r. 3] does not apply to a suit permitted to be filed *in forma pauperis* (F. B.).— 15 T. L. R., *178*.

**25.** The dismissal of the plaintiff's suit by the District Court seems right, but as the defendants falsely denied the authenticity of the bond, they ought not to get any costs. The parties will bear their respective costs throughout.— 15 T. L. R., *180*.

**26.** The suit was for contribution. The original decree was obtained by the children of the Karanavan of a family governed by both the Makkathayam and the Marumakkathayam systems of inheritance against the said Karanavan and his Seshakars for recovery of property mortgaged by the latter to the present plaintiff along with other properties and of costs and mesne profits. In pursuance of this decree, the plaintiff was dispossessed of the suit property and the whole costs and mesne profits were realised from him. He sued the Karanavan and his Seshakars for their aliquot portion of the mesne profits and costs. The defendants admitted their liability to pay their portion of costs, but refused to pay the mesne profits on the ground that the plaintiff alone enjoyed the usufruct of the property and, therefore, he was liable to account for the profits. The District Judge decreed only a moiety of the costs awarded by the former decree against the Karanavan, the first defendant, and dismissed the rest of the claim.

*Held.*—The plaintiff was entitled to a decree against each defendant for an aliquot share of the costs.

As the defendants cannot go behind the original decree they are liable to pay the mesne profits *pro rata* in the same way as costs.— 16 T. L. R., *111*.

**27.** Plaintiff's appeal was dismissed, but without costs, as the defendant had set up some false allegations.— 16 T. L. R., *145*.

**28.** A decree granted reliefs separately against each property. The holder of one of the properties deposited in Court the proportionate debt charged upon that property. The Court, in spite of the deposit, sold the very property along with the others for the realisation of the outstanding portion of the debt.

In appeal, the sale was cancelled, and each side was directed to bear his costs, as the respondent was not liable for the mistake of the Court and the appellant might have then and there moved the stay of the sale when the decree-holder accepted the money tendered by him.— 16 T. L. R. App., *3*.

**29.** A District Judge ordered that a plaint be taken off the file with costs to be paid from the estate of plaintiffs who were declared to be minors. The Judge's order was based on a deposition given by 1st plaintiff in the heading of which his age was given as 16.

*Held.*—The order dismissing the suit was wrong and the order for the recovery of the defendant's costs from the minor's estate illegal. See Section 422, C. P. C. [ = Or. XXXII, r. 2].— 17 T. L. R., *166*.

**30.** Where a District Judge granted a review of the order passed by him to the effect that the plaintiff who sued as a pauper should furnish security for the costs of the defendants and it was argued that the Judge was wrong in granting the review :

*Held.*—The District Judge was right in granting the review.

The Judge was right in cancelling his former order as there was no evidence to

show that the plaintiff was not a resident of Travancore and as the poverty of the plaintiff was no reason for calling upon him to furnish security for the costs of the opposite party. If pauper plaintiffs were, simply because they are paupers, required to furnish security for costs, it would nullify the good intentions of the Government who have made special provision to assist such persons in recovering their just claims.— **17 T. L. R. App.,** *20.*

**31.** The provisions of Section 521, C. P. C. [=Or. XL, r. 10] are wide enough and vest a discretion in the Court as to extension of time as well before as after the time once fixed for the deposit of respondents' costs by the appellant has expired.— **17 T. L. R. App.,** *41.*

**32.** The High Court has power under Section 568, C. P. C., [new Section 89] to revise an interlocutory order regarding the payment of the day's costs passed under Section 151, C. P. C., [=Or. XVII, r. 1] in case of any irregularity in the matter (By majority).— **19 T. L. R.,** *82.*

**33.** Where there are several defendants, only one set of costs should be awarded to all defendants even though they appeared by separate Vakils, provided their defence was common and not separate; and when only one set of Vakil's fees is allowed, the filing of one certificate for Vakil's fees for all the defendants together is enough to charge the plaintiff with the whole costs.— **19 T. L. R.,** *103.*

**34.** As in the case there were reasons to suspect misconduct on the part of the Sirkar's (fifth defendant's) servants, the lower Court, it could not be said, was wrong in its order as to costs of, and payable by, the fifth defendant.— **20 T. L. R.,** *24.*

**35.** As for the memo of objection filed on the defendant's behalf relating to costs, it could not be said that the discretion vested in the Court in the matter of costs was arbitrarily exercised by the lower Court in the case. Interference was declined, and objection also disallowed.— **1 S. D.,** *21.*

**36.** A Government Officer, whose order made within the scope of his authority, was sought to be set aside in a regular suit was not a necessary party to that suit; but the Goverament represented by the Dewan should be made a party, if the plaintiff wants any relief against the Forest Department in which the said Officer (3rd defendant) was employed.

The plaintiff did not want any relief against the Department, and his suit was for a declaration of his title and possession as against the 1st and 2nd defendants. The plaintiff was, no doubt, misled by the Munsiff's order in making the 3rd defendant a party, but the plaintiff was to blame for not appealing against the Munsiff's order and for again making the 3rd defendant a party to the appeal. The 3rd defendant was entitled to his costs as he acted simply in his official capacity and did not exceed his authority or jurisdiction.— **1 S. D.,** *235.*

**37.** The 2nd defendant was a *pro forma* defendant. It was the contention of first defendant that drove plaintiffs to the suit. The first defendant should therefore pay the costs of plaintiffs and second defendant in both Courts.— **2 S. D.,** *94.*

**38.** The defendant (Sirkar) raised a number of contentions which were not established, and put plaintiff to the expense of disproving them and of being ready with counter-evidence to rebut any that might be adduced by the Sirkar.

*Held.*—A decree directing the defendant to suffer his costs was not improper.— **3 S. D.,** *79.*

**39.** As to the costs of defendants 2 to 5 in the case, they must certainly get their costs, as they had no interest in contesting plaintiff's suit. Though the plaintiff did not originally include them in the suit, his contentions necessitated their being brought into the case. As the plaintiff was responsible for this, the lower Court's order in saddling him with the costs of defendants 2 to 5 was correct.— **3 S. D.,** *114.*

**40.** An unconditional tender before suit will not exonerate a defendant from liability for costs, if it is not accompanied by payment into Court after suit and before decree.— **3 S. D.**, *190.*

**41.** In dismissing the second appeal, the parties were ordered to bear their respective costs in the High Court, as the legal questions involved were by no means easy of solution or free from doubt.— **3 S. D.**, *199.*

**42.** The plaintiff was not a dutiful son of his parents and having regard also to the relationship between the parties (the 1st defendant being plaintiff's mother and defendants 2 and 3 being plaintiff's sisters), the parties were directed to bear their respective costs in all Courts.— **3 S. D.**, *212.*

**43.** A plea of tender of mortgage money to the mortgagee before action must be accompanied by a payment into Court after action.

As no payment was made into Court, the plaintiff should in the circumstances of the case, pay 1/4 of the costs of defendants (2, 3 and 10) in the lower Court and 1/2 the costs of defendants (2 and 3) in the High Court and bear his own.— **K. P.**, *40.*

**44.** In a redemption suit by a superior mortgagee the lower Court directed 1st defendant (mortgagee) to pay plaintiff's costs.

The general rule laid down in several decisions is that the costs of a redemption suit should be borne by the party seeking to redeem. But where the suit is rendered necessary by the vexatious and unreasonable conduct of the mortgagee, the latter must not only forfeit his costs but also pay plaintiff's costs.

*Held.*—The lower Court was right in its order as to costs as the conduct of the 1st defendant was vexatious, while that of the plaintiff showed his readiness and willingness to redeem.— **K. P.**, *102.*

Ref.—40 T. L. R., 7
( = 14 T. L. J., 80).

**45.** In a suit for redemption by Melottidars :

*Held.*—The lower Court was right in giving the mortgagee his costs of the suit, as the plaintiffs (Melottidars) did not even tender the mortgage amount into Court.— **K. P.**, *159.*

Ref.—40 T. L. R., 7
( = 14 T. L. J., 80).

**46.** The plaintiff having failed to substantiate his case ought to have no costs. He succeeds merely on the admission of the defendants who on the other hand have not taken pains to prove their case. The most equitable order seems to be to order each party to bear his or their own costs throughout.— **K. P.**, *323.*

**47.** In a suit for redemption of a mortgage one of the defendants (4th defendant) contended *inter alia* that the plaintiff was not heir of the mortgagor and that he was holding the property under Court-sale. The lower Court in entering judgment for plaintiff ordered the latter to pay certain amount as compensation for the 4th defendant's improvements in addition to the mortgage amount and also directed that defendant to pay plaintiff's costs.

*Held* (in appeal).—In view of the utterly false allegations of the 4th defendant the lower Court was right in making him pay plaintiff's costs. The argument that plaintiff should not be allowed her costs as she did not deposit the sum due to defendant on the mortgage in Court, did not apply to a case of the present nature.— **K. P.**, *347.*

**48.** One of the grounds on which the defendants in the case appealed was that the suit was barred by limitation. This contention prevailed, the decree of the lower Court was reversed and the suit dismissed as barred by limitation.

As the defendants (appellants) did not take the objection as to limitation in the lower Court, and did not raise an issue in that Court about limitation, the parties should bear their own costs in both Courts.— **K. P.**, *[illegible].*

**49.** Court-fee need not be paid on costs generally in all cases, unless the decree as to costs is questioned in appeal independently of any other appeal. Costs generally follow the result of a suit, and when there is an appeal against the decision in the main points involved in the suit, costs cannot be said to form the "subject-matter" in appeal, unless, for any special reason, objection is taken particularly to the order as to costs. The costs of a suit are no part of the subject-matter in dispute. — **1 T. L. J.**, *388*.

**50.** The third defendant (respondent) in the case who claims her costs and who was unnecessarily made a party to the suit by the first defendant may be fairly allowed half her costs (F. B.).—**26 T. L. R.**, *63*.

**51.** As to the objection as to want of parties (the ground on which the decision of the lower Court was reversed and the case remanded), was not taken in the Court below, and the memorandum of appeal, no order as to costs of the appeal is made.—

**26 T. L. R.**, *44*
( = **1 T. L. J.**, *322*).

**52.** The respondent (Sirkar) supports the appellants and is therefore not entitled to separate costs.

The Government having already registered the lands (Kandukrishi) in the name of the first defendant after hearing plaintiff's objections, ought not to have sanctioned to plaintiff to institute the suit. But for that sanction, the suit would not have been instituted. The Government was thus partly to blame for the suit. The Government was therefore rightly made to bear its own costs (F. B.).— **26 T. L. R.**, *184*
(=**1 T. L. J.**, *358*).

**53.** The appeal is dismissed with costs, one set to all the respondents, the apportionment of costs being made in proportion to the values of the properties claimed by each of them.— **27 T. L. R.**, *92*.

**54.** The appellants also objected to the decree of the lower Court as to costs. It had not been shown that the Judge below has exercised his discretion wrongly in passing his decree relating to costs. This ground of appeal also failed (F. B.).—
**29 T. L. R.**, *63*.

**55.** Plaintiffs put in an objection memo as to costs. The lower Court's view that as they considerably undervalued the improvements on the property, they are not entitled to much consideration in the matter of costs is correct. The objection memo fails and is dismissed with costs.—

**29 T. L. R.**, *125*.

**56.** The special appeal must fail. The fourth defendant respondent's pleader urges that he has been unnecessarily made a party and prays for his costs. As the fourth respondent should not have been made a party to the special appeal, he is entitled to his costs.— **3 T. L. J.**, *401*.

**57.** The first defendant (the Karanavan) who was *ex parte* in the High Court is not liable to pay plaintiff's (the next male member of the Tarwad) costs in the High Court, but is liable to pay plaintiff's costs in the Court below.— **30 T. L. R.**, *10*
(= **4 T. L. J.**, *137*).

**58.** The appeal is dismissed. The respondent has lost on the substantive ground of defence, and therefore each party shall bear the costs of this appeal.—

**30 T. L. R.** *50*
(=**4 T. L. J.**, *148*).

**59.** The appeal is allowed. The appellant is not allowed a refund of the court-fee paid on the appeal memorandum nor his costs in the High Court as he failed in the Court below to state clearly his defence on the question of *res judicata*.—

**31 T. L. R.**, *117*
(=**5 T. L. J.**, *289*).

**60.** In providing for the costs of a litigation, the Court has every discretion to allow a party the full Regulation fee or a fraction of it or nothing at all as Vakil's fee. But as in the case of all other instances of discretionary powers vested in Courts,

this discretion also has to be exercised judicially and not arbitrarily.

The plaintiff's suit failed entirely owing to his own fault, and there is no reason for holding that the first defendant, the Sirkar, is to be blamed at all in the matter of this litigation. In these circumstances, the lower Court should have exercised its discretion by allowing the appellant his entire costs including the full Regulation fee.

Vakil's fee is to be taxed for the Sirkar even though no Vakil's fee certificate is filed by the Sirkar.

Section 16 of the Vakils Regulation does not apply to cases where the Sirkar Vakil appears on behalf of the Sirkar.

**32 T. L. R.**, *130*
(=**6 T. L. J.** *216*).

**61.** The costs in the High Court of the second defendant who has been unnecessarily made a party to the second appeal must be paid by the plaintiff.—

**33 T. L. R.**, *281*
(=**7 T. L. J.**, *326*).

**62.** An order rejecting an appeal under Section 521, C. P. C., [=Or XL, r. 10] for failure to deposit costs is neither a decree as defined in Section 2 of the Code, nor an order falling within any of the Clauses of Section 557 [=Section 82 and Or. X.LII, r.1] and is therefore not appealable.—

**33 T. L. R.**, *284*
(=**7 T. L. J.**, *381*).

Rel.—13 T. L. J., 396.
Fol.—16 T. L. J., 80.

**63.** It is usually stated as a rule that an appeal is not to be allowed in respect of costs only. That means that, when the merits of a question have been determined, and when a Court has thought fit to give or refuse costs, in the exercise of its discretion, and in the absence of any settled principle on the subject, there is no appeal for or in relation to those costs. Where the trial Court has not applied its mind at all to the right of the parties to receive an award of costs, and when there has been no real exercise of discretion, or there has been a violation of any established principle, the Appellate Court should interfere. "Where a plaintiff comes to enforce a legal right and there has been no misconduct on his part— no omission or neglect which would induce the Court to deprive him of his costs—the Court has no discretion and cannot take away the plaintiff's right to costs." In other words, a successful party should not be deprived of costs unless he has been guilty of misconduct, omission and neglect; and this is an established principle.— **35 T. L. R.**, *37*.

Ref.—13 T. L. J., 3.

**64.** M. owed S. Rs. 500 upon a hypothecation bond of 1075. M. conveyed some among the hypothecated properties in 1082 to plaintiffs 1 to 5 and directed them to discharge the hypothecation debt due to S. Plaintiffs 1 to 5 executed a mortgage in favour of the defendant in 1083 and directed her to pay Rs. 650 in discharge of the debt due to S. S. sued M. for the recovery of his debt and obtained a decree in satisfaction of which he realised in execution, 5716 fanams from M. M. in her turn sued plaintiffs 1 to 5 and present defendant and obtained a decree against the plaintiffs and in execution brought some of their properties to sale. They ultimately raised money from the 7th plaintiff and deposited in Court Rs. 1,398-ch. 13 and got the court sale set aside.

The suit was to recover from the defendant the amount of Rs. 1,398 odd deposited by them with interest at 12 per cent. from the date of the deposit in Court. The lower Court decreed the suit. It was contended in appeal that the defendant was not in law liable to pay to the plaintiffs the costs of prior litigations as damages.

*Held.*—The defendant was not in law liable to pay to the plaintiffs the cost of the prior litigations as they were not damages which could fairly and reasonably be considered to arise naturally from defendant's breach of contract to pay S. nor such as

might reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it. In the case of non-payment of money, no matter what the amount of inconvenience sustained by the plaintiff, the measure of damages is the interest of the money only; and all other things sustained by him as the result of the breach is remote.— **35 T. L. R.**, *115* (=**9 T. L. J.**, *106*).

Ref.—37 T. L. R., 271 (=11 T. L. J., 484).
Dist.—39 T. L. R. 101 (=13 T. L. J., 115).

**65.** Costs are a matter for the discretion of the Court; but some reason should have been given for depriving the successful plaintiffs of their costs. No reason is given in the judgment. The objection memo is accordingly allowed with costs and the Sirkar (1st defendant) directed to pay the costs of the plaintiffs in the lower Court.— **36 T. L. R.**, *53*.

**66.** The decree directed that if the plaintiff deposited in Court a lump sum within a certain date, he should be treated as a subscriber by the defendants in their Chitty and he should be entitled to his costs from the defendants and the defendants should bear their own. Plaintiff deducted the amount due to him as costs and deposited the balance.

*Held.*—The question does not fall under the provisions of any of the Sections of the Civil Procedure Code, but in equity, plaintiff is entitled, while making the deposit, to take credit for the amount of the costs awarded to him by the decree.— **10 T. L. J.**, *91*.

**67.** Both parties have advanced false pleas. They will therefore bear their respective costs throughout.— **10 T. L. J.**, *284*.

**68.** The suit was for redemption of a mortgage; and the general rule in such actions is that the party seeking redemption should pay the costs of the mortgagee unless the latter's conduct has been improper or vexatious.— **12 T. L. J.**, *181*.

Ref.—40 T. L. R., 7 (= 14 T. L. J., 80).

**69.** The obtaining of the leave of the Court by a Receiver in insolvency for filing a suit is a matter between the Court and the Receiver. The Official Receiver prosecutes a suit at his own risk in the matter of costs and cannot charge them on the insolvent's estate if he loses.— **38 T. L. R.**, *245* (=**12 T. L. J.**, *270*).

**70.** It is a well established principle of law that an appeal in respect of costs only is entertainable when there has been no exercise of discretion, or when a question of principle is involved. Acting on this principle an Appellate Court ought not to interfere with an order relating to costs, unless the order is arbitrary or perverse on the face of it, or unless there has been such a gross mis-exercise of judicial discretion as to render interference necessary.— **13 T. L. J.**, *3*.

**71.** The ordinary rule is that costs will follow the event.— **39 T. L. R.**, *78* (=**13 T. L. J.**, *36*).

**72.** The District Court, by a judgment, dismissed an appeal before it for failure of the appellant to comply with an order directing him to deposit the day's costs of the respondent. A decree was also prepared in accordance with the judgment. A second appeal was preferred to the High Court.

*Held.*—No second appeal lay as there was in law no decree passed by the District Judge in the appeal before him. The order dismissing the appeal was neither a decree as defined by Section 2 of the Civil Procedure Code nor an order falling within Section 557 of that Code [=Or. XLII, r. 1], and was consequently not appealable.— **13 T. L. J.**, *396*.

**73.** The trial Court has given no sufficient reasons for departing from the ordinary rule allowing costs to the successful party. "In the case of a wholly successful defendant, the Judge must give the defendant his costs unless there is evidence that the defendant (1) brought about the litigation or (2) has done something connected with the institution or conduct of the suit calculated to occasion unnecessary litigation and expenses or (3) had done some wrongful act in the course of the transaction of which the plaintiff complains." In the case, the defendant cannot be said to have rendered himself liable under any one of these conditions. The plaintiff is accordingly ordered to pay the costs of this litigation throughout.— **13 T. L. J.**, *405*.

**74.** The general rule is that the cost of redemption suits should be borne by the party seeking redemption: and where the suit is rendered necessary by the vexatious and unreasonable conduct of the mortgagee the latter must not only forfeit his costs but also pay plaintiff's costs. "It would be unprofitable to go through the long roll of cases on this question, and I will only point out that a mortgagee has an absolute right to costs, unless it is forfeited by misconduct. It is sometimes said that the mortgagee's claim to costs is a matter of agreement. But this is obviously a fiction, being merely a deduction from the established chancery practice on the subject." The right to add his costs to the security is an indefeasible right of the mortgagee and it can be lost only by his misconduct. The mortgagee who lent his money has the right to get all costs which he incurred as if it is part of the money invested on the security of the property. Under the English Law it appears that a mortgagee has no right of appeal on a mere question of costs, while the disallowance of costs to the mortgagee is appealable as a matter of right.

There are three propositions which are established by decided cases—(1) that a mortgagee has an absolute right to costs unless they are forfeited by misconduct; (2) that if the absolute right is forfeited by misconduct, the costs are in the discretion of the Judge; and (3) that the raising of an untenable defence or a claim of a balance due after the mortgage has been fully paid off, both constitute misconduct by which the absolute right to costs is forfeited. The mortgagee's right to costs is a substantive one and the rule of discretion allowed to the Court comes into operation only on the misconduct on the part of the mortgagee.— **40 T. L. R.**, *7* (**=14 T. L. J.**, *80*).

**75.** The lower Appellate Court has given no reasons for not awarding costs to the successful respondent. The plaintiff has persisted in suing for a remedy which the Law cannot give him. There is no reason why he should not bear the consequences of failure (F. B).— **14 T. L. J.**, *168*.

**76.** As the point of law raised in the case is a novel one, no order is made as to costs.— **40 T. L. R.**, *1* (**=14 T. L. J.**, *197*).

**77.** As the special appellant was not prosecuting the appeal with due diligence, he will pay the special respondent's costs of the special appeal and bear his costs of the same, excepting the fee paid on the memorandum of special appeal which will be refunded to him.— **14 T. L. J.**, *410*.

**78.** If the defendant had contested the suit solely on the ground on which he succeeded, his claim for costs would have been unanswerable. But he contested the plaintiff's claim on other grounds as well, on which he has been defeated. Therefore it cannot be said that the Judge did not exercise a wise discretion in not awarding him his costs (F. B).—**41 T. L. R.**, *285* (**=15 T. L. J.**, *3*).

**79.** Having regard to the novelty of the question involved, no order is made as to costs (F. B).— **15 T. L. J.**, *394*.

**80.** As the defendants virtually took advantage of their own fraud and collusion,

## PART II.

### Execution.

#### *General.*

33. The provisions of this Code relating to the execution of decrees shall, so far as they are applicable, be deemed to apply to the execution of orders.

Application to orders.

they are directed to bear their costs throughout. **42 T. L. R.,** *29* (=**16 T. L. J.,** *10*).

**31.** A certain plot of land was recorded in the Sirkar accounts as waste land available for registry. The defendant applied for and obtained registry of the land as Puthuval. A third party sued the Sirkar and the defendant for a declaration that the land was part of his registered holding and for cancellation of the Puthuval registry. Both the Sirkar and the defendant contested the suit. A decree was passed against them with costs. In execution of that decree, the Sirkar deposited the whole amount of the costs, and then sued the defendant for one-half of the amount so deposited.

*Held.*—The claim of the plaintiff Sirkar for contribution was unsustainable.

The fact that the amount deposited by the Sirkar was the amount payable on a decree passed against it and the defendant jointly does not by itself conclude the liability of the defendant to pay one-half of it. One judgment-debtor may, without impugning the strength of the decree as between the plaintiff on the one side and himself and his co-judgment-debtor on the other side, plead that, as between himself and such co-judgment-debtor, the latter is liable to discharge the whole decree.

The Sirkar had, by showing this land in its public records as waste land available for registry, held itself out as owner of the land competent to pass a valid title to persons getting registry of the land as Puthuval. The defendant was entitled to act upon that representation and take a registry. If the registry was really incompetent on the ground of the Sirkar having no title and led to a suit by the real owner of the property, the Sirkar surely, and not the purchaser, is responsible for the litigation. Where the Sirkar contests that suit, it must pay the costs decreed to the plaintiff. The purchaser of the property from the Sirkar, when he contests the suit, does so merely to support his derivative title from the Sirkar, the act of the latter having necessitated his being a party defendant to the suit. That circumstance cannot take away the primary liability of the Sirkar for the suit and, consequently, for the costs decreed to the plaintiff in the suit.— **17 T. L. J.,** *480*.

**32.** See also—

Or. I, r. 1. —**13 T. L. R.,** *78*.
,, r. 10.— **3 S. D.,** *40*.

**Part II.**

The Indian Special Committee in their Report observe as follows:—

"5. The subject of execution is, perhaps, one of the most difficult with which we have had to deal. The present system, in the mofussil at any rate, tends to excessive delay and affords facilities for defeating the claims of creditors. As the same time the creditor often has only his self to blame owing to his own laches is prosecuting his rights. In the Presidency Town the same objections cannot be fairly raised; the

system works well; whilst, in the mofussil, the difficulties arise not so much from the machinery itself, as from the defective manner in which it is worked. One of the most fruitful sources of litigation is the setting aside of execution sales, on the ground of irregularity in the publication of the sale proclamation. It is notorious that, in many of these cases, the Court's officer, either through negligence or dishonesty, has not duly published the proclamation, but it is impossible to deal with such cases by any provision in a Code. After a most careful consideration of the subject, we have not seen our way to any very drastic changes in the present system. We have found ourselves unable to accept the somewhat far-reaching proposal of the Committee of 1902 in relation to the execution of decrees by precept; but we are so far in accord with the view expressed by that Committee as to have been able to insert in the Bill a Clause which enables the Court which passed the decree to issue a precept to any other Court to attach property of the judgment-debtor, pending execution in the ordinary course. Beyond this we have felt we should not safely go.

"We anticipate that there will be a substantial saving of time, and consequent expense, from the provision requiring that mesne profits should be ascertained by the Court under the decree itself, and not as now in execution proceedings. * *

"Other amendments deserving notice relate to (1) the power to break open the outer door of the judgment-debtor's dwelling house; (2) the date from which the purchaser's title accrues; (3) oral application for immediate execution; (4) the discretion of the Court in the execution of decrees for the restitution of conjugal rights; (5) execution against partnership property; (6) extended facilities for attaching salaries, and (7) powers to decree-holders to carry decrees into effect at the expense of the judgment-debtor.

"We regard the changes made in relation to execution as calculated to materially assist the judgment-creditor in recovering the fruits of his judgment."

The Committee further on in their Notes on Clauses observe:—"The bulk of the provisions as to execution will be found in the Rules, but the main provisions as to the Courts by which decrees may be executed, the questions to be determined by Courts executing decrees, the limit of time for execution, transferees and legal representatives, procedure in execution, arrest and attachment, the delegation to Collectors of power to execute certain decrees, the distribution of assets and resistance to execution have been retained in the body of the Bill."

## Case Law.

*(General.)*

**1.** Interest subsequent to decree may be awarded, though not specially provided for in the decree.— **2 T. L. R. App.,** *1.*

[See new Section 31.]

**2.** The attachment and sale proceedings held in execution of decrees are never considered sufficient to affect the interests of those who are not parties to the decree or the execution proceedings. So far as third parties are concerned, there is no difference between a private sale and a Court sale. (F. B.).— **5 T. L. R.,** *38.*

Ref.—6 T. L. J., 97
18 T. L. J., 671.
Dist.—34 T. L. R., 167.

**3.** Inasmuch as the decree (sought to be executed) has awarded separate shares to each of the plaintiffs and the interests of the plaintiffs were not joint, any one of them was competent to execute the portion of the decree that related to him separately.

An appeal lay against the order of the Zillah Judge refusing to execute a decree against sureties (who in consideration of the stay of execution of a decree pending the disposal of the appeal preferred against it) had made themselves responsible for the amount of the judgment-debt. **5 T. L. R., App.,** *7.*

**4.** Under the Civil Procedure Code (Travancore) a judgment creditor is entitled to proceed both against the property and the person of the judgment-debtors.

There is no provision in the Code which authorizes the Court executing the decree, to limit the execution to the property or to the person of the judgment-debtors.— **5 T. L. R. App.**, *8.*

**5.** The duties of the Civil Court executing a decree are ministerial. Hence, the order of forfeiture passed under Section 288 of the Code (Regulation II of 1087) is specially so, as the Court on plaintiff's default to pay in, the remainder of the purchase money, has no option but to carry, on its own motion, the deposit to the credit of Government. No appeal is allowed against this order. There is nothing in the Code barring the ordinary right of action in such cases, the rule that bars suits brought to question judicial acts of proceedings, not applying to orders under Section 288 of the Code.— **6 T. L. R.**, *32.*

**6.** No Court is competent by its order to stay proceedings in a Court of equal or superior jurisdiction.—**6 T. L. R. App.**, *1.*

**7.** No application should legally be treated as disposed of until all that could be done upon it has been done, or it has been rejected by a special order of Court.— **8 T. L. R.**, *156.*

Dist.—15 T. L. R., 9.

**8.** An application for execution of a decree was made more than 3 years after the last application for the same, but within 3 years from the date of the order for warrant, passed upon the last application. Notice was issued to the defendant to show cause why the application should not be granted. No objection having been taken by the defendant, his property was attached, though not sold in consequence of claims preferred by third parties. More than a year after the execution of the warrant of attachment, the defendant filed an objection that the decree was barred at the time of the last application for execution.

*Held.*—The plea of bar was too late. The defendant not having appealed against the order for attachment, it had become final and the said order, whether right or wrong, determined that the decree was not barred. **8 T. L. R. App.**, *41.*

**9.** A judgment-debtor's mortgage lien secured by document should, for the purpose of the attachment and sale in execution of the decree against him, be regarded as immovable property, and the provisions of the Civil Procedure Code relative to the attachment and sale of such properties should be strictly followed in bringing such lien to sale.— **8 T. L. R. App.**, *54.*

Ex.—20 T. L. R., 165.

**10.** Where the Court has ordered a process for execution of a decree to issue on an application by the decree-holder, the legal presumption is that the decree was not barred at the date of the order, as it is always the duty of the Court to ascertain whether the execution is barred before passing such an order. The debtor's silence as to limitation only strengthens this presumption.— **8 T. L. R. App.**, *55.*

**11.** An order rejecting an application for execution precludes the party from making a further application, unless and until that order is legally set aside.—**9 T. L. R.**, *113.*

**12.** An application to the Court which passed a decree to recall the case sent to another Court for execution is a step in aid of execution under Clause 4 of Article 158 of the Limitation Regulation. The duty of the Court which passed the decree is not extinguished simply because it has transferred a copy of the decree for execution to another Court and there is nothing to prevent both Courts executing the decree, provided arrangements are made to protect the judgment-debtor from the risk of being obliged to pay twice over.— **22 T. L. R.**, *83.*

**13.** The plaintiffs sued as trustees on behalf of an institution to recover monies and other properties in the hands of defendants 1 to 3 who were servants thereof. The suit was compromised by plaintiff and 1st defendant putting in a Razi petition to the effect that defendants 1 and 2 were together to realize certain monies and 1st defendant to pay plaintiffs 1 and 11, a sum of Rs. 95 within 3 months. The Court gave a decree in terms of the compromise. The question having arisen whether the decree may be executed personally against the 1st defendant:

*Held.*—The decree was executable against the 1st defendant. It clearly gave a relief against him within the meaning of Section 201, C. P. C., [new Section 116 and Or. XX, r. 6] and it may be executed as for a debt due by him.

Where the terms of a decree are ambiguous, the pleadings might be looked at to ascertain the intention of the parties and the Court.

Ambiguous decrees should be interpreted so as to be in accordance with law and so as to advance practicable remedies and in the light of common sense.

An argument drawn from inconvenience is forcible in law and an interpretation best in accord with convenience and justice can be put on ambiguous documents, whether decrees, deeds or statutes.— **3 S. D.,** ***173.***

**14.** Where the decree directed payment of the mortgage money to the 3rd defendant on his giving security, the 1st defendant consented in execution to the abrogation of the order as to security and thereupon the lower Court discharged that portion of the decree which related to the security :

*Held* (on appeal by the 2nd defendant).—The order of the lower Court was one modifying the decree and no such modification could be made by an execution Court.—

**K. P.,** ***441.***

**15.** A decree cannot be nullified or modified by any agreement made prior to its date, by which the parties contracted that it shall be nullified or modified if it is made (F. B.).

*Per Sadasiva Iyer, C. J.*—It is against public policy to allow some of the parties to a suit to enter into arrangements before decree as to how they will act to modify or nullify the decree in case the terms of the decree awarded such and such reliefs. The Court believes, before passing the decree, that it decided the rights of the parties at the date of the decree, and if a man, ranged as a defendant along with other defendants, and who is apparently fighting the plaintiff just like the other defendants, and praying for costs against plaintiff like the other defendants, were to make agreements with plaintiff that he will not execute any decree for costs which the Court might award in the belief that there was no such agreement, it is almost committing a fraud upon the Court. It was the duty of the party who had entered into such an agreement to tell the Court before it passes the decree that it need not put itself to the useless trouble of considering the question of costs or of awarding costs as between plaintiff and second defendant, and it was (to say the least) unfair to the Court to let it remain in ignorance of that fact.

" If the agreement which was pleaded as having been come to between the parties *before the decree was made,* be given effect to, it would have the effect of nullifying the decree ; and it seems to us *that upon this simple ground* the objection could not be *entertained.* A decree was duly made between the parties, and if they had entered into such an agreement as now alleged *it should have been incorporated in the decree. The decree being once made, it must be taken to be conclusive between the parties* and the agreement like the one which has been pleaded cannot be given effect to". (29 Cal., 810).— **25 T. L. R.,** ***128.***

**16.** A decree was passed in favour of plaintiff on 29-10-1081 in the following

terms:—"The plaintiff will have a decree establishing the right to maintenance from the first defendant at the rate of 28 Fs. per month. This will be a charge on the ancestral properties of the first defendant and plaintiff's husband's self-acquisitions." On 24-7-1082, the plaintiff applied for execution by attachment of property and by arrest of the first defendant, and claimed 39 months' arrears. The first defendant was arrested and brought before Court on 25-7-1082, when he applied for time to pay up the amount, and time was granted. After several adjournments, the amount was finally paid on 20-8-1082. On 3-7-1086, plaintiff applied for the arrears that accrued since the date of the first application. Defendant opposed the application on the ground that the decree was merely a declaratory one, and no amount could be realised as maintenance in execution of the same. Plaintiff replied saying that the matter was *res judicata* by reason of the prior successful application for execution. The Munsiff upheld the defence and dismissed plaintiff's application holding that her remedy was by a fresh suit.

*Held* (On appeal).—There was no *res judicata* as there was no previous order construing the decree. But as the first defendant had once allowed execution to proceed actively without the slightest objection and had paid the arrears claimed in plaintiff's application of 24-7-1082, he could not, on the principle of estoppel, be allowed to object to the execution of the decree.—

**27 T. L. R.,** *128*
**(=2 T. L. J.,** *310*).

**17.** A compromise decree provided that the defendant was to pay plaintiff Rs. 81 on or before 30-3-1086, failing which plaintiff was to have a decree for the whole suit amount which was larger than Rs. 81. The defendant, alleging that he tendered the amount (namely Rs. 81) to plaintiff on 28-3-1086, and that plaintiff refused to accept payment, applied on 29-3-1086 to the Court for Chellan for the said amount. The Chellan was, however, issued only on 1-4-1086, on which date the defendant paid the amount into the treasury. Plaintiff applying for execution of the decree for the larger amount, it was contended for the defendant that he (plaintiff) was not entitled to do so under the terms of the compromise decree. The plaintiff replied by saying that he became entitled to the larger amount, as the defendant failed to conform to the terms of the compromise decree.

*Held* (In second appeal).—As the defendant applied for Chellan on 29-3-1086, *i. e.*, before the last date for payment mentioned in the compromise decree, and as it was established that the defendant had the whole amount with him on that date, there was a valid tender of payment within the date fixed by the compromise decree. Therefore, plaintiff was not entitled to execute the decree for the larger amount.—

**3 T. L. J.,** *348*.

**18.** In a suit instituted against a man subsequent to his death, an *ex parte* decree was obtained and was assigned to the appellant. On his application, the Court executing the decree held that the decree was void and refused execution. On appeal:

*Held.*—(1) The Court executing the decree could go into the question whether a decree was passed by a Court having jurisdiction.

(2) The decree was void *ab initio* in that the Court had no jurisdiction to pass a decree against a person who was dead at the time of suit. The decree was not in any sense a decree at all.

(3) The fact that the heir of the deceased person did not repudiate liability under decree when notice of assignment and of execution were sent did not raise any estoppel against him.— **4 T. L. J.,** *409*.

**19.** The parties to a suit entered into a compromise to the effect that 40 Parahs of paddy and Rs. 5 were to be paid by the defendant on or before the 30th Dhanu 1086 and that, in default, the plaintiff was entitled to be given a decree for the plaint

claim of 395 Fs., and a decree was passed accordingly. On 30-5-1086, the defendant who should have paid 166 Fs. deposited in Court only 137 Fs. which was drawn from Court by plaintiff. On the ground that the full amount had not been paid within the stipulated time, the decree-holder applied for execution of the decree in respect of the balance of 258 Fs. relying on the alternative provision in the decree.

*Held.*—The decree-holder should be allowed to take out execution only for 29 Fs., the balance, and he should not be allowed to take advantage of the penal clause, inasmuch as it was competent to the Court to relieve against a penalty even though the penal provision was embodied in a decree.
**30 T. L. R., 7.**

Diss.—35 T. L. R., 257
( = 9 T. L. J., 311 ).

**20.** A compromise decree provided that the defendants should pay the plaintiff, within one year of the date of the decree, a sum of Rs. 7,000 with interest at 6 per cent. per annum; failing which, the plaintiff was to be at liberty to realise a sum of Rs. 7,630 with interest at 9 per cent. per annum from thé date of the compromise (24-5-1091) by sale of the property belonging to the defendants. Within the stipulated time, however, a sum of Rs. 3,150 alone was paid. The decree-holder, thereupon, applied for execution of the decree on the ground that the judgment-debtors had made default, and claimed to recover the larger amount mentioned in the decree with interest at the rate of 9 per cent. per annum from the date of the decree.

It was contended for the judgment-debtors that the alternative stipulation in the compromise was by way of penalty, and should, therefore, be relieved against.

*Held.*—The decree-holder was entitled to the larger sum mentioned in the decree with interest at the rate of 9 per cent. per annum from the date of the decree and to realise it by execution, and the Court had no jurisdiction to relieve against the provisions of the decree. Where an agreement has merged in a decree, so that the contractual obligation has been converted into a final command of a Court of Justice, the Court which has to carry out the command has no jurisdiction to adjudicate upon its reasonableness, but has merely to carry it out by means of processes appropriate to the case. Jurisdiction to relieve against a penal stipulation is merely another aspect of the jurisdiction to assess reasonable damages. But, in the case under consideration, the time for assessment of damages had passed, as the suit had ended in a final decree.— **35 T. L. R., *257***
**( = 9 T. L. J., *311*).**

Ref.—36 T. L. R., 183
( = 10 T. L. J., 181).
18 T. L. J., 668.
Fol.—19 T. L. J., 752.

**21.** A decree was in the following terms: —"The plaintiff is allowed to realise Rs. 300 and odd, costs and interest from the defendant and his Tarwad properties. The plaintiff should produce a succession certificate within six months, in default of which the suit will stand dismissed with costs."

The time fixed in the decree for the production of the succession certificate expired on 22-9-1094. Various applications for execution were made before and after that date, but the succession certificate was produced only on 30-2-1095.

The lower Appellate Court held that the act of the Court of first instance in receiving the succession certificate on 30-2-1095 and allowing execution to proceed was tantamount to an order condoning the delay in the production of the certificate which the Court was competent to do.

*Held.*—The execution Court was not competent to extend the time fixed in the decree for the production of the certificate and as it was not produced within the time specified, there was nothing for the decree-holder to execute.

When the Court has no jurisdiction and there is nothing to show that the judgment-debtor was aware of the execution proceedings, the question of estoppel does not arise.— **13 T. L. J.**, *104*.

**22.** A decree cannot cease to be executable merely because a document with reference to which it is to be construed is lost.

Even a lost decree can be executed, the provisions thereof being proved by secondary evidence.— **14 T. L. J.**, *391*.

**23.** The principle of marshalling of securities is applicable to execution proceedings.

The principle of marshalling being based on considerations of equity, it cannot be so applied as to prejudice the rights of the prior encumbrancer (F. B.).—

**42 T. L. R.**, *312*
( = **16 T. L. J.**, *148*).

Ref.—43 T. L. R., 136
( = 18 T. L. J., 326 ).

**24.** It is no doubt true that the right to get maintenance is a personal right which is neither transferable nor heritable. But where a decree for maintenance has been obtained, the arrears of maintenance up to the date of suit and the future maintenance which accrued due and become payable on the date of the death of the plaintiffs become converted into a debt by the decree. They are personal rights or personal causes of action till the date of the decree. They cease to be such after decree and become heritable and transferable.

The heirs of the deceased decree-holders are entitled to execute the decree not only in respect of the arrears of maintenance due before the date of suit awarded by the decree but also such portion of the amount awarded as future maintenance as becomes actually due on the date of the death of the decree-holder.— **16 T. L. J.**, *350*.

**25.** Section 270 of the Companies Regulation (I of 1092) applies only to cases where for the realisation of a debt due by the company proceedings are taken against a contributory as such who, under the provisions of Section 160 of the Regulation, is liable to contribute to the assets of the company. The nature and extent of the contribution are defined in Section 160. In those cases there is no personal or separate debt owing by the contributory to the creditor. Section 270 does not apply to a case where a person has obtained a decree not only against the company, but also against a contributory in his individual capacity and proceeds to execute against the latter the personal decree obtained against him.—**16 T. L. J.**, *418*.

**26.** A decree relating to future maintenance ran as follows :—

"അന്യായപ്രകാരമുള്ളതിൽ വാദിയുടെ ജീവനാംശം വകയ്ക്കായി വൃ ഒന്നുക്കു നാലു കോട്ട നെല്ലും മാസം ഒന്നുക്കു ൧൫ പണവും വീതം വാദിക്കു പ്രതിയുടെ പക്കൽ നിന്നും പട്ടിക വസ്തുക്കളിൽ നിന്നും ഈടാക്കാനുള്ള അവകാശത്തെയും പട്ടിക ൩-ാം നമ്പർ വസ്തുവിൽ വടക്കെ കിഴക്കു മൂലയിലുള്ള ഓല മേഞ്ഞ കെട്ടിടത്തിൽ വാദിക്കു താമസിക്കാനുള്ള അവകാശത്തെയും സ്ഥാപിച്ചിരിക്കുന്നു"

The decree was a mere declaratory decree and could not be enforced in execution.

In execution a decree must be construed by its own terms and not by the plaint. Where, however, the decree is ambiguous in its terms, it may be competent to the Court executing it to refer to the pleadings to ascertain its precise meaning.—

**43 T. L. R.**, *455*
( = **17 T. L. J.**, *653*).

**27.** In suits for redemption, the decree may be treated as being in favour of both parties and it has been held that the mortgagee-defendant is entitled to execute the decree and recover the amount which the mortgagor-plaintiff is directed to deposit in Court before recovering possession. The application by the mortgagee, therefore, to realise any amount that is decreed to be paid

to him by the mortgagor as a condition precedent to the recovery of the property is an application in execution. Article 153 of the Limitation Regulation (old) would thus apply to it.— **17 T. L. J.,** *767.*

**28.** The fact that the first mortgagee has purchased the equity of redemption in Court auction in execution of a decree for sale on his mortgage without making the puisne mortgagee a party to the suit, and has obtained possession pursuant to the sale, does not take away or affect the right of the puisne mortgagee to realise his security by sale of the mortgaged property. His right is not confined merely to redeeming the first mortgage. He may, if he chooses, redeem the first mortgage. But redemption is an equitable right or (in India) a legal right which he may seek to enforce, and not a liability which he may be compelled to discharge.— **42 T. L. R.,** *420*
(**=16 T. L. J.,** *362*).

Fol.—44 T. L. R., 275
(=18 T. L. J., 736).

**29.** Where, during the pendency of a suit or execution proceedings based on a mortgage, the holder of a money decree brings to sale the mortgaged property, and the same property is re-sold in execution of the mortgagee's decree, the earlier sale does not avail against the subsequent sale, but is affected by the doctrine of *lis pendens.*

Proceedings in a mortgage suit are not determined by a decree for the purpose of the application of the doctrine of *lis pendens.* The *lis* in such a case continues till the decree itself is satisfied (F. B.).—
**43 T. L. R.,** *42*
( **= 16 T. L. J.,** *510*).

**30.** The plaintiff, decree-holder, obtained a decree on a hypothecation of items 1 to 30 executed in his favour by the first defendant. He had made the second defendant also a party to the decree as he had taken a mortgage of the above properties reciting plaintiff's hypothecation debt. The second defendant obtained a decree for the money he paid under his mortgage and purchased items 16 to 30 in execution. It was after such purchase by him that the plaintiff filed the present suit and obtained the decree therein. After the decree the plaintiff assigned his rights to the respondent who after getting himself impleaded as an additional plaintiff moved the Court for the sale of items 16 to 30 in execution.

The second defendant resisted the application and prayed for the sale of these items being postponed till the other items were sold and the sale proceeds appropriated towards discharge of the decree debt. The lower Courts dismissed this application mainly on two grounds, *viz.,* (1) that the second defendant could not be allowed to go behind the decree which makes all the properties liable for the amount thereunder inasmuch as he was a party to the same, and (2) that the equitable relief by way of marshalling now claimed cannot be extended to him as he had notice of the plaintiff's hypothecation debt.

On appeal by the second defendant, a third ground was urged as disentitling the applicant to the above equitable relief, that he cannot claim the benefit of the same by his having become full owner of items 16 to 30 by his auction purchase, and therefore having succeeded to the right, title and interest of the mortgagor over the same.

*Held.*—The execution Court has power to relieve judgment-debtors of the fraud of decree-holders, despite the provisions of the decree in such matters. The present appellant who has become a full owner of items 16 to 30 of the mortgaged properties is a judgment-debtor under Section 2 (10) who has not been released under the decree. The insistence by the assignee-decree-holder to proceed against items 16 to 30 alone on the ground merely of his right to proceed against any portion of the hypotheca as he chooses, when considered with the circumstances that the other items had been admittedly gifted away by the hypothecator

to his near relatives, would justify the inference of fraud, as indicated above.

Under the above circumstances, the execution Court is competent to relieve the appellant against the fraud of the decree-holder by allowing the applicant the right to marshall.

The purpose of the doctrine of marshalling assets is the protection as far as possible of subsequent interests and it must not be applied to the mortgagee's injury. The rule is subject to the qualification that it shall not be applied where it should work any injustice to the prior creditor, or to any other person interested in the security, as for instance, an intervening lien-holder having a superior equity, or where the mortgagee's right to satisfy his claim out of both funds would be in any way impaired or where there is any doubt of the sufficiency of the fund upon which the junior creditor has no claim; or where the prior creditor is not willing to run the risk of obtaining satisfaction out of that fund or where that fund is of a dubious character, or is one which may involve him in litigation to realise.

In the present instance, it has not been satisfactorily pointed out how the assignee —decree-holder would be prejudiced by a direction requiring him to proceed against items 1 to 15. The owners of the equity of redemption so far as those items are concerned are mere volunteers with notice of the mortgage, inasmuch as they have obtained the same under a gift from the original hypothecator.

The principle to be followed in such cases is that, in the absence of any statutory prohibition, Courts in the State, which are also Courts of equity, should take into consideration the equities of the parties and mete out substantial justice by passing appropriate orders in the matters before them. The refusal of the equitable rights claimed by one of the parties before the execution Court, on the ground that the decree in the case is silent as to them would sometimes leads to a travesty of justice. The claim for marshalling had to be properly dealt with only by the execution Court and not during trial, as the latter was not the proper occasion to enquire into the same. What has to be looked into is whether the mortgagee is prejudiced by the marshalling prayed for. If he is not, the equitable reliefs claimed could be granted in spite of the parties claiming them having raised the same during trial, and the Courts' refusal thereof under the decree. Hence the execution Court is competent to allow the appellant to marshall, if on the merits he is entitled to claim it, even where the decree does not provide for the same.

To the contention, that the appellant having had notice of the prior hypothecation bond, he cannot validly claim the right to marshall:

*Held.*—The question of notice was immaterial in cases of marshalling of securities.

A mortgagee, even if he has purchased the equity of redemption of a portion of the mortgaged properties, has the right of marshalling still available to him.—

**43 T. L. R.,** *136*
(= **18 T. L. J.,** *326*).
Rel.—43 T. L. R., 429
(= 19 T. L. J., 491).

**31.** The bar of *lis pendens* is not applicable to a compromise between the parties, for, the same partakes of the nature of any other contract or agreement which would be enforceable only between the parties thereto or their privies.—**18 T. L. J.,** *478*.

**32.** On the decree-holder applying for sale of the properties under attachment, notice was issued to the judgment-debtor fixing a day for the settlement of the proclamation. The judgment-debtor applied for and got time on two occasions to enable him to state his objections but did not pursue the matter further. As no objections were filed, the proclamation was settled and the date of the sale fixed and the sale held on the appointed day. On the day the sale was confirmed, the judgment-debtor applied under Section 40 for cancellation of the sale

on the ground that the properties sold were not liable to be proceeded against for the whole of the decree amount.

*Held*.—It was not open to the judgment-debtor to raise the plea at that stage as he had failed to urge the same on receipt of the notice of attachment or that relating to the proclamation.

The principle of *res judicata* is applicable to execution proceedings also and the only circumstance that should be paid special attention to is that the decision sought to be used for this purpose must have been passed after notice to the other side. In applying the principle of *res judicata* to such cases, the provisions of Section 10 could be referred to. As laid down in Explanation IV to Section 10, any matter which might and ought to have been made a ground of defence or attack should be deemed to have been a matter directly and substantially at issue between the parties.—

**18 T. L. J.**, *485*.

**33**. Though an executing Court has a right to construe the decree, it is bound to execute it as it stands and has to confine itself to the four corners thereof. It cannot amend the decree under the guise of interpreting it. The obligations under the decree cannot be varied by the execution Court. Even if a penalty is imposed under the decree, the execution Court has no jurisdiction to relieve the judgment-debtor against the same.— **18 T. L. J.**, *668*.

Ref.—19 T. L. J., 726.

**34**. Though Section 10 which has re-enacted the provisions of Section 9 of the Code of 1065, is not applicable to execution proceedings, the principles embodied therein have, in the interests of the finality of the proceedings, to be applied to execution proceedings also. The only important question that has to be considered in this matter in such cases is that the other party should have had notice of the fact that the question adjudicated upon was fixed for decision on that date. The rule of *res jud icata* applicable to execution proceedings is not to be confined to matters actually heard and decided, but is also to be extended to those matters that ought to have been raised and which could by implication be taken to have been heard and decided.—

**18 T. L. J.**, *880*.

**35**. Some junior members of a Tarwad obtained a decree for future maintenance charged on Tarwad properties on 24-1-1100. They applied in execution for the realisation of the maintenance for 1102. The first defendant, the Karanavan, had in the meantime on 2-1-1102 filed a suit for partition. He opposed the application for execution, but the lower Court allowed execution to proceed.

The first defendant appealed. After filing the appeal he died. He had gifted his properties including his share in the Tarwad properties to his son. The latter was brought on record as the second appellant.

On behalf of the second appellant it was contended that as the law treated the first defendant as having become separated from the Tarwad on the date of his plaint and as entitled to a definite share from that date, that share should be excluded from the scope of the decree for maintenance.

*Held* (Overruling the contention).—It might be so and possibly at the time of actual partition of his share by metes and bounds he might claim the allotment to be made on that principle. But until a decree of Court adjusted or modified the charge created by the maintenance decree on all the Tarwad properties, no party could claim to minimise the effect of that decree.— **18 T. L. J.**, *906*.

**36**. There is no provision of law prohibiting the share of a joint decree-holder in the decree being attached for his debt. It may happen that his ostensible share is not really worth anything; but that is not a matter for determination at the time of the attachment.— **19 T. L. J.**, *648*.

**37**. The executing Court has to execute the decree as it stands. Though it is within

ts powers to construe the decree, it could not relieve the judgment-debtor against a penalty imposed under the decree or vary its terms. In cases where it is ambiguous, it may be convenient to refer to the pleadings.

The executing Court cannot allow execution on the strength of a later pronouncement in another case to which the decree-holder and the judgment-debtor are both parties. The execution of the decree can be allowed only as it stands and no amendments thereto by the execution Court are permissible in the light of events after the decree.— **19 T. L. J.**, *726*.

**38.** A decree was passed on a compromise made by the parties and it ran thus:—

"അന്യായപ്രകാരം കോടതി ചിലവുംകൂടെയുള്ള മുഴുവൻ പണത്തിൽ വൻ പണം ഈയ്യാണ്ട വൈകാശിമാസം ൫-ാംനു-ക്കകം വാദിക്കു പ്രതികൾ കൊടുക്കുന്നതിനും അവധി ലംഘിച്ചാൽ അന്യായപ്രകാരമുള്ള പണവും അന്യായ തീയതി മുതൽ നാളതുവരെ മാസം ഒന്നുക്കു ൪ ബ്രിട്ടീഷ് രൂപാ വീതമുള്ള വാടകയും കോർട്ടു ചിലവും അതിനു അന്യായ തീയതി മുതൽ നൂററിനു ഒന്നു വീതമുള്ള പലിശയും കൂടി വാദി പ്രതികളെക്കൊണ്ടും പ്രതികളുടെ വസ്തുക്കളിൽ നിന്നും വിധി നടത്തി വിധി നടത്തു ചിലവു സഹിതം ഈടാക്കി എടുത്തുകൊള്ളുന്നതിനും രാജിപ്രകാരം വിധിച്ചു."

Within the time thus fixed the judgment-debtor paid into Court Rs. 112 or 16 Fs, less than the amount which should have been paid. The decree-holder treated this failure to pay the whole amount as a default under the provision and prayed to have the decree executed for the larger amount stipulated. Subsequently, the judgment-debtor paid in the 16 Fs. and made up the deficiency. The Munsiff granted the prayer of the decree-holder, but the District Judge refused it.

The question in special appeal was whether the provision to pay the larger amount on failure to pay the smaller amount is in the nature of a penalty which the executing Court had jurisdiction to relieve against. The District Judge granted relief to the judgment-debtor by invoking the inherent powers under Section 115. The question was also raised in special appeal whether Section 115 can be properly applied to the case.

*Held.*—An executing Court cannot go behind the decree and canvass its correctness, provided the decree is one passed with jurisdiction. The executing Court has only to enforce it as it stands. Any party to the decree who wishes to question its correctness must have recourse to such means as are indicated for getting decrees set aside or altered. The executing Court is not the authority to be moved for the purpose. The question, whether, if the provision that is complained of were found in a contract between the parties, instead of in a decree of Court, it could not be relieved against as a penalty or whether the time fixed in the decree for the fulfilment of a condition would in a contract between the parties, have been considered as of the essence of the contract, is quite irrelevant at the stage of execution of the decree.

Having regard to the peremptory nature of the provision in the decree, it would be irrelevant to consider whether the failure to fulfil the condition was wilful or not. The bare fact of the non-fulfilment of the condition vests the other party with a right which cannot be taken away by any consideration or the causes that led to the non-fulfilment.

Section 115 does not purport to confer any power: it merely preserves to Courts such powers as they have always had. Unless Courts understand and strictly adhere to the bounds within which the doctrine of inherent power should be invoked, there would be "judicial chaos." The inherent power is to be invoked only where there

34. The expression "Court which passed a decree," or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,—

Definition of Court which passed a decree.

---

is a grave injustice which cannot be remedied by recourse to any of the specific provisions of the law. Nor does the Section become applicable in every case where there is no specific remedy. A Court cannot, for instance, act in a matter in which it has no jurisdiction, though it may be satisfied that there has been injustice.

The executing Court will be travelling beyond its jurisdiction in considering the reasonableness of the decree which it is asked to execute. It cannot do what it has no jurisdiction to do by invoking Section 115. The District Judge was wrong in relying upon Section 115.— **19 T. L. J.**, *752*.

**39.** A junior member cannot in execution proceedings object to the execution of the decree by the Karanavan, where the decree is in favour of the Tarwad. Even where it is alleged that, if the decree-amount is realised by the Karanavan, he is likely to misappropriate it, it does not justify an executing Court to place restrictions over the usual powers of a Karanavan.

Where a junior member apprehends from the past conduct of a Karanavan, that the latter will misappropriate or mis-apply the sum realised, if execution is taken out, it is always open to the junior member to take those steps that are proper and within his reach to safe-guard the interests of the Tarwad. It is not in execution proceedings however that the misconduct of a Karanavan could be enquired into.—
**19 T. L. J.**, *1013*.

**40.** See also—

Sec. 10.— **21 T. L. R.**, *41*.
**3 S. D.**, *61*.
„ 30.— **26 T. L. R.**, *58*
(= **1 T. L. J.**, *150*).
Sec. 38-A.— **18 T. L. R.**, *14*.
**1 T. L. J.**, *22*.
**26 T. L. R.**, *207*
(= **2 T. L. J.**, *19*).
**29 T. L. R.**, *204*
(= **4 T. L. J.**, *38*).
**43 T. L. R.**, *134*.
(= **17 T. L. J.**, *184*).
„ 43.— **9 T. L. R.**, *136*.
„ 52.— **19 T. L. J.**, *851*.
„ 59.— **2 T. L. J.**, *97*.
**2 T. L. J.**, *100*.
„ 105.— **12 T. L. R.**, *155*.
Or. II, r. 2.—**19 T. L. J.**, *920*.
„ XX, r. 12.—**2 T. L. J.**, *291*.
„ XXI, r. 1.—**27 T. L. R.**, *217*
(= **2 T. L. J.**, *377*).
„ r. 6.—**30 T. L. R.**, *171*
(= **4 T. L. J.**, *408*).
„ r. 14.—**15 T. L. J.**, *312*.
„ r. 15.—**3 T. L. J.**, *120*.
„ r. 22.—**8 T. L. R. App.**, *41*.
„ r. 27.—**2 T. L. J.**, 1.
„ r. 28.—**6 T. L. R.**, *81*.
„ r. 56.—**9 T. L. R.**, *78*.
**10 T. L. R.**, *64*.
„ r. 62.—**26 T. L. R.**, *70*
(= **1 T. L. J.**, *191*).
**26 T. L. R.**, *131*
(= **1 T. L. J.**, *195*).
„ r. 82.—**19 T. L. J.**, *221*.
„ r. 87.—**20 T. L. R.**, *235*.
**19 T. L. J.**, *411*.
XXXVII, r. 2.—**26 T. L. R.**, *162*.

---

**Sec. 33** [ = „ = *S. 36* ]

The Indian Select Committee on the 1901 Bill said:—"It is expedient to declare that the provisions of this Chapter apply not merely to decrees but to orders capable of execution."— *India Gazette dated 21-3-1903, Pt. V.*

(*a*) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance; and

(*b*) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

*Courts by which decrees may be executed.*

Court by which decree may be executed.

35. A decree may be executed either by the Court which passed it or by the Court to which it is sent for execution.

---

**Sec. 34** [ = S. 586, Para 2 = *S. 37* ]

I. The second Para of Section 586 of Regulation II of 1065 was as follows:—

"In the same Chapter, the expression 'Court which passed a decree,' or words to that effect, shall, unless there is something repugnant in the context, be deemed to include, where the decree to be executed is passed in appeal, the Court which passed the decree against which the appeal was preferred, and, where the Court which passed the decree to be executed has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed were instituted at the time of making application for execution of the decree, would have jurisdiction to try such suit."

II. The Indian Select Committee of 1903 which reported on the Civil Procedure Code amending Bill of 1901 said:—"We have substituted the expression 'Court of first instance' for 'Court which passed the decree against which the appeal was preferred.' Our reason is that, as a matter of practice, the Court of intermediate appeal never executes a decree passed in second appeal."—

*India Gazette dated 21-3-1903, Pt. V.*

**Case Law.**

See under Sec. 15.—**32 T. L. R.**, *168* (=**6 T. L. J.**, *378*).

---

**Sec. 35** [ = S. 218, Para 1 = *S. 38* ]

See Sections 36 and 37, and Or. XXI, rr. 4—8.

**Case Law.**

A decree obtained in the District Court of Ernakulam was transferred for execution to the Parur District Court. It was objected to that, as the decree was also being executed in the Ernakulam Court, it should not be executed in the Parur Court also at the same time.

*Held.*—Whether a decree should be executed simultaneously in two Courts is a matter that ought to be left to the discretion of the Court that passed the decree. There is no general prohibition for executing a decree in two Courts simultaneously.—

**17 T. L. J.**, *311*.

36. (1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,—

Transfer of decree.

(*a*) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court; or

(*b*) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court; or

(*c*) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it; or

(*d*) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed a decree may, of its own motion, send it for execution to any subordinate Court of competent jurisdiction.

---

**Sec. 36** [ = S. 218, Paras 2 & 3 = *S. 39*].

1. *Sub-Sec.* (*1*) (*c*).—Clause (*c*) of Para 2 in the corresponding old Section did not contain the words "or delivery."

2. *Sub-Sec. 2.*—The wording at the end of the corresponding Para 3 of the old Section was :—"for execution to any Court subordinate thereto." The words "of competent jurisdiction" are an addition. "These words have been inserted, as under the old Code the Courts which passed the decree had the power *suo moto* to transfer their decrees to any Court subordinate to them. The amendment was evidently made adopting the language used in Section 39 of the Indian Code of 1908."— **18 T. L. J.**, *1001*.

3. See. Sections 35 and 37 and Or. XXI, rr. 4—8.

**Case Law.**

1. Plaintiff obtained in Travancore a joint and several decree against eight persons one of whom (the 8th defendant) was permanently residing and carrying on business in the Native State of Cochin and had no property in Travancore. On the plaintiff applying for transfer of the decree to Cochin for execution, it was objected on behalf of the 8th defendant that the plaintiff was not entitled to the transfer as he could execute the decree against the persons who are resident in Travancore and own property therein. The Court of first instance upheld

the defence and dismissed the plaintiff's application. On appeal :

*Held.*—As the decree was a joint and several decree, the plaintiff (decree-holder) was entitled to execute it as against any one of the decree-debtors. The only grounds required to support an application for a transfer of the decree for execution to another Court are those contained in Section 218, C. P. C. If those grounds existed as against any judgment-debtor against whom execution was applied for, the decree-holder was entitled to have the decree transferred as prayed for. To hold otherwise would be to deprive the decree-holder of his just rights.

As in the case, the 8th defendant was permanently residing in Cochin and had no property in Travancore, in view of Clauses (*a*) and (*b*) Section 218, C. P. C., the decree-holder was perfectly within his rights to apply for transfer. He was not bound to exhaust his remedies against the persons of the other defendants and their properties situate in Travancore before he was entitled to proceed against the 8th defendant or his properties in Cochin.— **5 T. L. J.,** *139.*

**2.** The respondent obtained a decree for money *ex parte* in a British Court against the appellant, a resident of this State, and got the decree transmitted for execution to the Kottayam District Court. After various infructuous applications, the last of which was in Mithunam 1090, the decree-holder got the records re-transmitted to the British Court the same month. An application was then made there but it was held that the decree had become barred. Thereafter, in Makaram 1093, the decree-holder again got the decree transmitted to the Kottayam Court and applied for execution. The debtor pleaded that, as the decree was barred in British India, where it was rendered, it was not enforceable in Travancore.

*Held.*—A Court to which a foreign decree is sent for execution does not retain its jurisdiction to execute the decree even after the execution has been withdrawn from it or after it has returned the decree to the Court which passed it with the certificate of failure to execute it.

Hence the proceedings taken prior to Mithunam 1090 in the Kottayam Court cannot keep alive what in law had ceased to be before that Court, by reason of its having become *functus officio* in that respect. When with the formalities required by the law, the decree was transferred again in Makaram 1093, it had ceased to be operative owing to the effect of the limitation law in British India and was not therefore validly enforceable.— **38 T. L. R.,** *157*
(= **12 T. L. J.,** *287*).

**3.** *Per Sankara Pillai, J.*—A Munsiff's Court to which a decree is transferred for execution has jurisdiction to execute it though it is passed in a suit the value of which is in excess of the limit of its pecuniary jurisdiction.

*Per Varghese, J.*—There is nothing in Section 218 to limit the pecuniary jurisdiction of the Court to which a decree is sent for execution. It is well-known that a Munsiff's Court can entertain a claim petition in respect of a property much above its pecuniary jurisdiction : it is an exception to the general rule. Similarly it seems that Section 218 confers a jurisdiction which is an exception to the general rule.—

**39 T. L. R.,** *211*
( = **14 T. L. J.,** *207*).

**4.** In the present state of the law, the more reasonable construction will be to hold that the word "jurisdiction" in Section 36 (2) should be taken to relate to territorial jurisdiction with reference to Section 8 of the Civil Courts Regulation and Sections 16 to 19 of the Civil Procedure Code, and not to the pecuniary limits prescribed by law,—

**18 T. L. J.,** *1001.*

**5.** See also—

Or. XXI, r. 51,— **24 T. L. R.,** *12.*

37. The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same the circumstances attending such failure.

Result of execution proceedings to be certified.

38. The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

Powers of Court in executing transferred decree.

[38-A. (1) Our Government may, from time to time, by Notification in Our Government Gazette,

Execution of decrees passed by Courts in British India and Indian States.

(a) declare that the decrees of all or of any of the Civil Courts situate in British India or in the territories of any Indian Prince or State in alliance with His Majesty the King, Emperor of India, may be executed in Travancore as if they had been made by the Courts of Travancore, and

(b) cancel any such declaration.

---

**Sec. 37** [= S. 218, Para 4 = *S. 41*]

See Sections 35 and 36, and Or. XXI, rr. 4–8.

**Sec. 38** [= S. 222 = *S. 42*]

**Case Law.**

1. Section 222, C. P. C., confers on a Court to which a decree is transferred the same powers in executing such decree as if it had been passed by itself. There is no provision bestowing upon a Court, to which a decree has been transferred for execution, any of the powers of the Court which passed the decree in matters other than those relating to the execution of the decree. It has no jurisdiction to interfere with the decree in any way even though it thinks the decree in question to be erroneous by reason of its not being in conformity with the judgment or owing to any other reason. The fact that the property, the acquisition of which by the Sirkar gave rise to the suit, is, as a result of re-adjustment of territorial jurisdiction, within the jurisdiction of the executing Court, does not confer upon it jurisdiction to amend the decree.—
**13 T. L. J.,** *86.*

Ref.–19 T. L. J., 204.

2. The powers of the Court executing the decree sent to it are co-extensive with those which the Court passing the decree has with respect to matters relating to the execution of the decree. It has full powers to construe the decree as it stands. Of course, the Court could not, by reason of the transfer, exercise any of the powers which the Court that passed the decree has in matters other than those relating to the

(2) It shall be competent to the High Court, with Our previous sanction, to make such Rules, as may be necessary for the guidance of the subordinate Courts in executing the decrees mentioned in Sub-section (1). The provisions of Part IX of this Code shall not apply to such Rules.]

---

execution. The determination of the question as to whether the decree had been passed against a particular person or not is one which falls within the purview of the powers of the execution Court.—
**19 T. L. J.**, *204*.

**3.** See Or. XXI, r. 6.—
**30 T. L. R.**, *171*
(=**4 T. L. J.**, *408*).

---

**Sec. 38-A.**

I. This Section was inserted by Section 3 of Regulation III of 1101. It corresponds to Regulation IV of 1061 which was as follows :—

"A Regulation to authorise the execution in Travancore of the decrees passed by the Civil Courts in British India and the Cochin State.

*Preamble.*—Whereas it is expedient that the decrees passed by the Civil Courts in British India, or by the Civil Courts of the Cochin State should be executed in Travancore, in the same manner as the decrees of Our Civil Courts; We are hereby pleased to enact as follows :—

"1. Our Government may, from time to time, by Notification in the Travancore Gazette,

(*a*) declare that the decrees of all or of any of the Civil Courts situate in British India or in the Cochin State may be executed in Travancore, as if they had been made by the Courts of Travancore, and

(*b*) cancel any such declaration.

"2. Our High Court, with Our previous sanction, shall be competent to make such Rules, as may be necessary, for the guidance of the subordinate Courts in executing the decrees of the Courts of British India or of the Cochin State."

II. "Before the enactment of Regulation IV of 1061, foreign judgments could not have been, by reason of the operation of a well-known principle of private International law, enforced by process of execution in Travancore. Foreign judgments could have been, before the date of that enactment, enforced in this State only by instituting suits on them. When suits are instituted on foreign judgments, the latter are, by operation of the rule of law already referred to, liable to be impeached on the grounds mentioned in Section 10 of the Civil Procedure Code. To obviate the inconvenience, hardship and delay arising from this, it was apparently thought necessary to give a speedier and more effective remedy than was available by the institution of suits on foreign judgments to the holders of decrees of two foreign States, namely, British India and the Native State of Cochin. Regulation IV of 1061 was accordingly enacted to take the Civil Courts of British India and the Cochin State out of the category of foreign Courts and to confer a new jurisdiction with reference to execution on the Travancore Courts for the benefit of the British Indian and Cochin decree-holders. * * It is conducive to the interests of the three States and the welfare of their subjects, that the Courts in any one of these States should be enabled to execute the decrees of the Courts of the other two States."

"At one time, in the United Kingdom of Great Britain and Ireland and in British India, foreign judgments were not enforceable except by suit. The method of enforcing such judgments by way of execution was

first introduced in the United Kingdom in 1868; in British India in 1882; and Travancore and Cochin followed suit in 1886."—
**29 T. L. R.,** *204*
**(=4 T. L. J.,** *88*).

III. The Section 38-A corresponds to Section 44 of the British Indian Code, which is as follows:—

"44. The Governor-General in Council may, by Notification in the Gazette of India, declare that the decrees of any Civil or Revenue Courts situate in the territories of any Native Prince or State in alliance with His Majesty and not established or continued by the authority of the Governor-General in Council, or any class of such decrees, may be executed in British India, as if they had been passed by the Courts of British India."

### Case Law.

**1.** While a mortgagor of immovable property was in possession of the same under a lease from the mortgagee, a creditor of the latter sued him (the parties being residents of, and the property being situate in the Cochin State) in the Anjikymal Zillah Court, obtained a decree against him, and his interest in the usufructuary mortgage, put up to auction and became the purchaser thereof at the Court-sale in 1055, and in 1057, sued the mortgagor, lessee, in the same Zillah Court for the recovery of the sums due under the mortgage and Puravaipa deeds executed to the mortgagee. During pendency of this suit, the territory in which the property in litigation was situate, was awarded to Travancore by the decision of the Arbitrator in the Travancore and Cochin States Boundary Dispute. The decree in the said suit was passed after such territorial transfer. On the creditor (the present plaintiff) seeking to execute it after getting it transferred to the Parur Zillah Court, the defendant, a purchaser of the said property from the heirs of the original mortgagor-lessee, objected to the execution and the objection was allowed. The present suit was instituted to enforce the attachment.

*Held.*—(1) The questions affecting the validity or otherwise of the sale of the property, when within Cochin territory, under a decree passed by a Cochin Court, should be decided with reference to the law of that country and not the Civil Procedure Code of Travancore: and such sale must be held to be valid in the absence of proof that it was not conducted according to the law of Cochin.

(2) The decree of the Cochin Court against the mortgagor-lessee having been passed after the transfer of the mortgaged land to the Travancore jurisdiction, such decree and the subsequent attachment thereunder were inoperative.

(3) The purchaser's (plaintiff's) claim to recover the land as mortgagee was barred, more than 12 years having elapsed from the date of his suit and the date of the Arbitrator's award.— **13 T. L. R.,** *27*.

Fol.—K. P., 314.

**2.** The appellant in the case was the holder of a decree of a Cochin Court dated 16-7-1052. The decree was transferred for execution in 1065 under Regulation IV of 1061. After the transfer, applications were made for execution in 1066 and 1068, under Section 228 of the Civil Procedure Code, both of which were granted. These proceedings having proved abortive, the decree-holder put in a fresh application on 27-11-1071. The District Judge rejected the application as barred under Section 228, as fifteen years had elapsed from the date of the Cochin decree.

*Held.*—The starting point of limitation of a decree transferred from one Court to another is the date of the decree in the original Court and not the date of admission on the execution file of the Court to which it is transferred.

The period of limitation for the execution of a foreign decree transferred to the State must be determined according to the law of this State and not according to the law of the State from which it is transferred.

Although the Rules prescribed under Regulation IV of 1061 say that the procedure in the execution of foreign decrees shall be according to Regulation II of 1037, yet as that Regulation had, since the introduction of Regulation II of 1065, been expressly repealed by the Legislature, the procedure (including the Law of Limitation) in the execution of such decrees in Travancore must be according to the laws for the time being regulating the Civil Procedure of the State.— **13 T. L. R.,** *207.*

Ref.—38 T. L. R., 157
( = 12 T. L. J., 287).

**3.** A decree obtained from the Small Cause Court at Madras was transferred for execution to and was executed by the Quilon Munsiff's Court. After the money was realised in execution, the judgment-debtor filed a suit in that Munsiff's Court for refund of the same as damages and for cancellation of the Small Cause decree. It was contended for the defence that a suit of this nature was not maintainable. The first Court allowed the suit, but the District Judge on appeal eventually dismissed the suit on the ground that a suit for setting aside a decree should be brought in the Court that passed the decree :

*Held.*—The District Judge was right. The policy of the law is to compel parties against whom a decree of one Court had been, at the instance of that Court, executed by another Court to prefer their objections to the validity of the decree to the Court which passed it, and not to allow Courts of equal or inferior status to sit in judgment over one another ; and this policy would be defeated if the party against whom a decree is passed by one Court is to be allowed to impeach that decree by means of a fresh suit in another Court. A suit of this description for setting aside a decree, if otherwise maintainable, must be brought in the Court which passed the decree or in any Court to which that Court is subordinate, and the Quilon Munsiff was not competent to set aside the decree of the Madras Small Cause Court.

No claim for damages would lie, as the amount had been recovered under a subsisting decree, which not having been set aside, the debt created by it should be regarded as a genuine debt.— **18 T. L. R.,** *14.*

Fol.—21 T. L. R., 138,
26 T. L. R., 207
( = 2 T. L. J., 19 ).
29 T. L. R., 204
( = 4 T. L. J., 38 ).
Ref.—32 T. L. R., 168
( = 6 T. L. J., 378 ).
Overruled.—40 T. L. R., 194
( = 14 T. L. J., 508).

**4.** A decree was passed by the Trichur Munsiff Court against the appellant, a permanent resident of the Travancore State. The appellant had contested the suit in the Trichur Court, but failed. When the execution of the decree was applied for in the Parur Munsiff Court to which it had been transferred, the appellant resisted execution on the ground, *inter alia*, that the Cochin Court had no jurisdiction to pass the decree.

*Held.*—The appellant having submitted to the jurisdiction of the Cochin Court, could not question the jurisdiction of the Cochin Court to execute decree.

A person who had submitted himself voluntarily to the jurisdiction of a foreign Court is not entitled to oppose the execution of that decree by a Court in whose jurisdiction he has property.

*Per Sadasiva Iyer, C. J.*—The second word "may" in Regulation IV of 1061 is imperative.

"It is very difficult to believe that the Legislature in passing Act IV of 1061 intended that when the Cochin decree-holder sues upon the Cochin judgment or sues upon the same cause of action again in the Travancore Court, the defendant can prove fraud, incorrect view of Travancore or international law, contrariety to natural justice,

&c., but if he wishes at once to execute the Cochin decree, the judgment-debtor cannot attack the decree on any of the above grounds. I think that "international comity" if it did not go so far as to dispense with these conditions in the case of a suit, could not have intended to dispense with them in the case of execution proceedings".— **1 T. L. J.**, *22.*

Fol.—26 T. L. R., 207
(=2 T. L. J., 19).
Dist.—29 T. L. R., 204
(=4 T. L. J., 35).

5. One of the points raised in the case before the lower Court on the judgment-debtor's behalf was that the decree passed by the Sub-Court in British Cochin and sent for execution, on the application of the decree-holder, to the Munsiff's Court at Trivandrum, was passed without jurisdiction and was a nullity and it could not therefore be executed in this State. The defendant was a subject of the Travancore State and residing in Travancore, and had also not submitted himself to the jurisdiction of the Cochin Court at the time the decree was passed. The lower Court held that it was not competent to go into the question.

*Held.*—The lower Court was right.

In the case of domestic decrees, a well understood rule of law is that an executing Court cannot usually question the legality or validity of the decree under execution. Objections to the legality or validity of a decree under execution can usually be entertained only by the Court which passed it. This rule of law applies also to a foreign decree like the one in the case.

The effect of Regulation IV of 1061, the Notification published and the Rules framed thereunder, is to make this rule of law applicable to decrees of the Courts in British India and in the Cochin State, sent to the Courts in Travancore for execution.

The word "may" occurring for the second time in Section 1 of the said Regulation and in the Notification referred to above, is imperative and means "must."

The ordinary rule of International Law that Courts cannot, by their judgments, bind absent foreigners does not apply to the facts of the case.— **26 T. L. R.**, *207*
(= **2 T. L. J.**, *19*).

Fol.—29 T. L. R., 204
(= 4 T. L. J., 35)

6. It was not open to a judgment-debtor, in a decree passed by a Civil Court situate in British India or in the Cochin State and sent to a Court in Travancore for execution, to raise, in the executing Court, the objections which would be open to him under Section 10 of the Civil Procedure Code [new Section 12], if a suit were instituted against him in a Travancore Court on a foreign judgment. To maintain otherwise would be to hold that it is in the power of a judgment-debtor of a British Indian or Cochin Court decree sent to Travancore for execution to completely nullify the provisions of Regulation IV of 1061. This certainly could not have been the intention of the Legislature. The observations of Sadasiva Iyer, C. J., in 1 T. L. J., 22 were *obiter dicta.* (F. B.)

*Per Muthunayagom Pillai, J.*—When a Travancore Court is asked to execute a British Indian or Cochin decree, the former should enquire if the decree satisfies the conditions specified in Section 10 of the Code of Civil Procedure.

Under the English Judgment Extensions Act of 1868, it has been held that a defendant, proceeded against by the method by execution, could impeach the judgment under certain circumstances. In British India and Cochin, the same ruling has been made.

There is nothing peculiar in Regulation IV of 1061 to indicate that after the passing thereof, the right of the defendant to impeach foreign judgments which existed previously was meant to be extinguished.

The Preamble to the Regulation (IV of 1061) refers only to the *manner* of execution of foreign decrees. There is nothing in the Regulation prohibiting a party from impeaching the validity of a foreign decree. As for the notifications and rules passed thereunder, they are *ultra vires* if they go beyond the immediate scope and object of the Regulation.

The remedy by way of execution was intended by the Legislature to be but cumulative with the previous remedy by way of suit. As no exception is made in Section 10 of the C. P. C., in favour of British Indian and Cochin judgments brought up for execution under Regulation IV of 1061, it is clear that the Legislature was not prepared to attach any special sanctity to British Indian and Cochin judgments and treat them as if they were domestic decrees for all purposes.

The view that suits based on foreign judgments are governed by Section 10, C. P. C., but not proceedings in execution of such judgments, would lead to anomalous results.

—29 T. L. R., *204*
(=4 T. L. J., *38*).

Overruled.—33 T. L. R., 166
(= 7 T. L. J., 293).

**7.** For some money alleged to be due to a Cochin Firm from defendant a permanent resident of Kottayam, the Firm sued defendant in the Cochin Munsiff's Court and obtained an *ex parte* decree against him, and the decree was transferred to the Kottayam Munsiff's Court for execution. In the course of the execution proceedings, the decree-holder also instituted a suit against the judgment-debtor in the Kottayam Munsiff's Court also, for recovery of money on the same cause of action as that on which the Cochin decree was passed. This suit was dismissed after trial on merits. Notwithstanding the dismissal of the suit, the decree-holder moved the Kottayam Munsiff's Court for execution of the Cochin decree. The judgment-debtor objected to the execution of the decree on the following, among other grounds:—

(i) That the Cochin Munsiff's Court had no jurisdiction to pass the decree sought to be executed.

(ii) That the decree was obtained by fraud.

(iii) That the dismissal of the suit by the Kottayam Munsiff's Court barred the execution of the Cochin decree.

*Held.*—The Munsiff's Court of Kottayam had jurisdiction to investigate the merits of the objections, namely, want of jurisdiction and fraud, raised by the judgment-debtor to the execution of the Cochin decree.

If the defendant was neither a resident in the State of Cochin at the time of the commencement of the suit nor a subject of the Raja of Cochin at the time of the judgment in the action, and if further he did not voluntarily submit to the jurisdiction of the Cochin Court, then the decree passed against him must be treated as an absolute nullity by the Courts of Travancore.

If the decree of the Cochin Court be found to be a valid decree, its effect could not be nullified by the decree passed by the Munsiff's Court of Kottayam on the same cause of action.

*Per Raman Menon, C. J.*—Prior to the introduction of the changes made by Regulation IV of 1061 and the Rules thereunder, when a suit was instituted on a foreign judgment, it appears to have been open to the defendant to show that the judgment sued on was invalid, either on the ground (1) that the Court which had pronounced it had no jurisdiction to do so; or (2) that it had been obtained by fraud; or (3) that the proceedings in which the judgment had been obtained were opposed to natural justice. Possibly also the defendant might invalidate the judgment by showing that, on the face of the proceedings, it appeared to be founded on an incorrect view of inter-

national law in force in the State in which execution was sought, or that it sustained a claim founded on a breach of any law in force there. In short, it would seem to be correct to state generally that whatever objections are declared by the Legislature to be admissible against a foreign judgment produced by a defendant in bar to an action, were equally admissible against a foreign judgment by a plaintiff either to found or to support an action. * * The above defences would still be open to a defendant against whom a foreign judgment which does not fall within the privileged class, is sought to be enforced by means of a suit. But it is contended that, in virtue of Regulation IV of 1061 and the rules framed thereunder, decrees passed by the Cochin and the British Indian Courts, when sent to Travancore for the purpose of execution, assume the character of domestic decrees, and cannot therefore be attacked as invalid in the Courts of Travancore, which, being Courts of execution merely, would be incompetent to entertain such objection. * * But I am unable to accept the position as correct.

The Regulation and Rules authorise execution, in Travancore, of the "decrees passed by the Civil Courts in British India and the Cochin State". The language, if literally construed, would include even decrees respecting land situate in Travancore which, it is certain, our Courts would refuse to execute, until we have some plainer indication of the intention of the Legislature than is found in the general words used by the statute. * * In my opinion, the unqualified language used by the Regulation and the Rules with reference to the decrees that are made executable in Travancore should necessarily be restricted to some extent; and if so, inasmuch as there is nothing in the Regulation itself to show on what principles and in what manner the language should be qualified, it would seem to follow that the Legislature in empowering our Courts to issue execution on Cochin and British Indian decrees, did not intend to take away from us the power we had undoubtedly possessed, prior to the passing of the Regulation to examine foreign decrees when the holders of them applied for our exequatur by means of suits founded on them. In my opinion, the general words of the Regulation can be explained satisfactorily only on the above assumption.

The above view is strengthened by the word "may" in the Regulation which always imports, in my opinion, *authority*, and not *command*. It is *permissive* and not *imperative*. * * The word "shall" in Rule 1, if meant to exclude the discretion given by the statute, must, in my opinion, be disregarded as being *ultra vires*. * *

The words "as if they &c." occurring in Clause (*a*) of Section 1 of Regn. IV of 1061 are controlled by the words "may be executed." In other words, the equivalence is declared merely for the purpose of execution. The above words do not have the effect of converting Cochin and British Indian decrees into domestic decrees, but merely gives them the benefit of all the processes in aid of execution that are available for the execution of domestic decrees. * * The statute merely *authorizes* us to execute Cochin and British Indian decrees sent to us for the purpose and does not *imperatively require* us to do so without discrimination (F. B.).— **33 T. L. R.**, *166* (**=7 T. L. J.**, *293*).

Fol.—10 T. L. J., 387.
Ref.—14 T. L. J., 122.

**8.** On the 9th Audi 1087, the assignee of a decree passed by the Calicut Sub-Court against the appellant (judgment-debtor), a permanent resident of this State, and transferred to the Munsiff's Court, Kottayam, for execution, applied to have the judgment-debtor's immovable property attached. Notice was issued to the latter to show cause why the application should not be granted. He did not appear and the application was granted. This was followed up in Kumbhom 1088 by an application for the issue of a proclamation for bringing the

attached property to sale. On notice being issued, the judgment-debtor applied for time to enable him to file objections, which was refused. The sale, however, did not take place for want of bidders. In Kumbhom 1089, the assignee-decree-holder applied for arrest of the judgment-debtor and the application was granted. In 1092, the decree-holder again applied to bring the attached property to sale. This application was opposed by the judgment-debtor on the ground that the Calicut Sub-Court had no jurisdiction to pass the decree sought to be executed against him.

*Held.*—(1) Under the above circumstances, it was not open to the judgment-debtor in 1092 to object to the execution of the decree on the ground that the decree sought to be executed was passed by a foreign Court having no jurisdiction. It is well-established that where a judgment-debtor being called on to dispute, if he wished, or if he could, a certain proposition of right and consequential demand of relief or action by the judgment-creditor, fails in his contention to the contrary, or, at any rate, allowed the judgment to go by default, he is not entitled to have the matter re-opened. Applying that principle to the facts of the case, it will be seen that the judgment-debtor was bound by the former orders permitting execution to be had against him.

(2) The earlier orders passed by the execution Court were not decisions in a former suit but in a proceeding of which the application in which the order under appeal was passed was merely a continuation and were final between the parties. The binding force of the prior orders depends not upon the *res judicata* Section but upon general principles of law. "If they are not binding, there will be no end to litigation."—

**35 T. L. R.**, *19.*

Ref.—10 T. L. J., 387.
17 T. L. J., 90.

**9.** According to Rules 2 to 5 framed in pursuance of Section 3 of Regulation IV of 1061, decrees of British Indian Courts are executable in Travancore Courts only if the papers referred to in Rule 1 (whatever the means of transmission, *i. e.*, whether by post, by private messenger or in any other way) reach the Travancore Courts under circumstances which would show that they were sent to the Court concerned by the Court from which those papers were issued.

**35 T. L. R.**, *124*
**( = 9 T. L. J.**, *167*).

**10.** No presumption of jurisdiction exists in cases where it appears from the record that the foreign judgment or decree sought to be enforced through our Courts was given *ex parte* against a non-resident who is a subject of this State. It lies on the holder of such foreign decree to satisfy our Courts that the decree has been duly or validly obtained, before our Courts can admit to execution or declare executory, his decree. A duty lies on our Courts to examine the validity of the foreign decree before enforcing it directly or indirectly.—

**10 T. L. J.**, *85.*

Fol.—10 T. L. J., 387.

**11.** An *ex parte* decree on a promissory note was obtained in the District Court of Trichur which is a Court in the Native State of Cochin by the first defendant in the case, against the second defendant, the head of a Nambudiri Illom of Travancore. The second defendant was a subject of this State and was not resident in the foreign country at the date of the action, but he had some property situate in the foreign country. The decree was transferred to the Parur District Court for execution. To a notice under Section 244 of the C. P. C. [=Or. XXI, r. 20 (1) ] issued to the second defendant to show cause why the decree should not be executed, he did not appear. Then execution was issued against the properties of the Illom and the person of the judgment-debtor. Junior members of the Illom brought the present suit for a declaration that the Illom properties were not liable to be proceeded against in execution

of the Cochin decree, making the Cochin decree-holder the first defendant, and head of the Illom, the judgment-debtor in the Cochin decree, the second defendant.

The following main points arose for decision :—

(1) Whether the fact of the second defendant's possession of property in the Cochin State would give the Cochin Court jurisdiction to pass the decree sought to be executed.

(2) Presumption with regard to foreign decrees and whether the circumstances of the second defendant's non-objection to the execution of the Cochin decree, when notice was issued to him, would preclude him in a subsequent proceeding to raise the question of want of jurisdiction.

(3) Whether, even if the second defendant was so precluded, his conduct would bind the plaintiffs also.

*Held (Per Cheriyan, J.—Palpu Pillai, J. concurring).*—

(1) Possession of property is not sufficient to justify a foreign Court in exercising a general jurisdiction over the person possessing it. Other grounds, such as those mentioned by Dicey in his Conflict of Laws in Rules 83 and 84 must exist. [" Rule 83. In an action *in personam* in respect of any cause of action, the Courts of a foreign country have jurisdiction in the following cases:-

Case 1.—Where at the time of the commencement of the action the defendant was resident (or present) in such country, so as to have the benefit, and be under the protection, of the laws thereof.

Case 2.—Where the defendant is, at the time of the judgment in the action, a subject of the Sovereign of such country.

Case 3.—Where the party objecting to the jurisdiction of the Courts of such country has, by his own conduct, submitted to such jurisdiction, *i. e.*, has precluded himself from objecting thereto—

(*a*) by appearing as plaintiff in the action, or (*b*) by voluntarily appearing as defendant in such action without protest, or (*c*) by having expressly or implicitly contracted to submit to the jurisdiction of such Courts."

Rule 84.—In an action *in personam* the Courts of a foreign country do not acquire jurisdiction either—(1) from the mere possession by the defendant at the commencement of the action of property locally situate in that country, or (2) from the presence of the defendant in such country at the time when the obligation in respect of which the action is brought was incurred in that country."]

(2) Since the second defendant had not, before the decree, submitted to the jurisdiction of the Cochin Court and since the decree itself was pronounced *in absentum*, it is an absolute nullity by International Law.

Whenever a decree passed by a Court in one or other of the foreign States mentioned in Regulation IV of 1061 is sought to be executed in a Civil Court in this State, it is the duty of the latter Court to satisfy itself that the decree in question is a valid decree that can be legally executed in Travancore. It is open to the Travancore Court of its own motion to examine the validity of the decree, even though the judgment-debtor had not raised the objection.

But when in such cases, the judgment-debtor does not raise any objection to the validity of the decree, it is, in the absence of anything on the face of the decree itself, open to the Travancore Court to treat the foreign decree as *prima facie* valid. It is not necessary in such cases for the execution Court to pass a formal order declaring that, in its view, the decree in question is executable in Travancore. It is sufficient if the subsequent proceedings allowed by the Court give clear indication that, in the opinion of the Court, the decree is one whose execution in Travancore should be permitted.

In this case notice was issued by the Parur Court to the judgment-debtor to show cause why execution should not be granted and it was only on his failure to take advantage of the opportunity so afforded to him that attachment of the Illom properties and warrant for arrest were issued. These circumstances clearly indicate that the Parur Court admitted the decree for execution, and the presumption is that it did so after satisfying itself as to its validity.

If the execution Court decided, though erroneously that the decree was one which ought to be admitted for execution, the judgment-debtor is not entitled to have the matter re-opened afterwards in another and subsequent proceeding. The only remedy of the judgment-debtor is to get the order recognising the decree vacated by appeal or in review. The judgment-debtor, not having done so prior to the institution of this suit, is bound by the order (though erroneous) of the execution Court.

If the notice to show cause against the execution of the decree was not legally served on the second defendant, his remedy would be to get the order of the execution Court reviewed on that ground and not to raise it in a fresh suit like this.

(3) The decree under execution was passed against the second defendant in his capacity as the head of the Illom. The plaintiffs have in this suit no *locus standi* except as representatives of the Illom. Therefore the plaintiffs are as much precluded as the second defendant himself from raising in this suit objections to the validity of the decree under execution, on the ground that the Court which passed it had no jurisdiction to do so.

But they can resist the enforcement of the decree against the Illom properties on the usual grounds, *viz.*, that the decree was obtained fraudulently or that the debt which formed the basis of the decree was not supported by consideration and family necessity.

*Per Sesha Aiyer*, *J.* (dissenting).—

(1) Possession of property situate in a foreign country is insufficient to give the Courts of that country jurisdiction in an *action in personam* over a subject of that State who was not resident in the foreign country at the date of the action, and who has neither appeared in answer to the process, nor expressly agreed to submit to the jurisdiction of the foreign Court.

(2) The Cochin decree, obtained as it is, against the second defendant who is not a subject of, nor domiciled nor resident in, the foreign country, but belongs to this State, is a nullity according to International Law and must be treated as an absolute nullity by the Courts in Travancore.

There is no presumption that a decree of a foreign Court, whose decrees are declared executory by Regulation IV of 1061 and the Rules thereunder, is valid. The burden is on the decree-holder to prove that the decree is valid and executable in the State.

A decree which is a nullity as having been passed by a Court having no competent jurisdiction continues to be a nullity in spite of the judgment-debtor's failure to impeach it in execution proceedings at the earliest stage; and this so-called acquiescence arising from such failure cannot render the decree valid and enforceable. Proceedings in execution taken upon a foreign decree that is *ab initio* null and void are a fraud on the domestic Court, and the decree-holder must suffer the risk of those proceedings being declared void at any stage when the Court becomes cognisant of the true legal character of the decree.

Where notice under Section 244 [ =Or. XXI, r. 20 (1) ] of the Civil Procedure Code was affixed to the door of the second defendant's house on the ground that he was absent, it is doubtful if there has been proper service of notice.

(3) Even if there should be estoppel against the second defendant, it cannot extend to the plaintiffs also, because they are

suing on behalf of the Illom and they have not been guilty of any conduct which can operate to effect waiver or estoppel.—
**10 T. L. J.**, *387*.

Ref.—11 T. L. J., 113.
14 T. L. J., 122.

**12.** The appellant obtained an *ex-parte* decree for money in the Tuticorin Subordinate Judge's Court against the respondent, who is a subject of and is resident in Travancore. The decree was transferred to the Nagercoil District Court for execution; and on the contention of the respondent that the decree was a nullity according to the rules of International Law, the lower Court rejected the application for execution as unsustainable. On appeal to the High Court, it was contended for the appellant that the case fell within the principle that, where there had been a voluntary appearance by the defendant, he could not afterwards be allowed to plead that there was no jurisdiction in the foreign Court to render judgment. For this contention, the appellant relied upon the fact that the respondent had, while the suit was on the file of the Tuticorin Court, executed a Vakkalathnamah to a pleader in Tuticorin empowering him to appear and plead in the cause and that the pleader had in pursuance of the power appeared in the cause, though it was only to say that he had no instructions.

*Held.*—The decree of the Turicorin Court was one passed *in absentem* and as there had been no submission to jurisdiction the decree was internationally a nullity.

The cases in which a defendant's appearance may be regarded as amounting to submission to the jurisdiction of the Court are those in which the defendant appears and pleads on the merits; and in those cases, whether or not he disputes the jurisdiction of the Court over him, he invites the Court's assistance in his favour to relieve him from a liability which the plaintiff by his action seeks to rest on him. By thus taking his chance of getting a judgment in his favour, the defendant makes the Court internationally competent to render judgment on the merits and the judgment rendered in these circumstances is binding on him.— **11 T. L. J.**, *113*.

Fol.—38 T. L. R., 189
(= 12 T. L. J., 109).

**13.** The respondent obtained a decree for money *ex parte* in a British Court against the appellant, a resident of this State, and got the decree transmitted for execution to the Kottayam District Court. After various infructuous applications, the last of which was in Mithunam 1090, the decree-holder got the records re-transmitted to the British Court the same month. An application was then made there, but it was held that the decree had become barred. Thereafter in Makarom 1093 the decree-holder again got the decree transmitted to the Kottayam Court and applied for execution. The debtor pleaded that as the decree was barred in British India, where it was rendered, it was not enforceable in Travancore.

*Held.*—It is a well recognised rule of law that when the execution of a foreign decree is sought, it is the law of limitation of the executing Court that applies and not the law of the Court that passed the decree.

After the date of the withdrawal of execution and return of records to the foreign Court, certifying the result of execution proceedings, the Travancore Court does not retain its jurisdiction to execute the decree, and the proceedings taken prior to that date could not keep alive what in law had ceased to be before the Court, by reason of such Court having become *functus officio* in that respect.

When on the date of a subsequent transfer to a Travancore Court for execution, the decree had ceased to be operative owing to the effect of the law of Limitation in British India, there was no subsisting liability under the decree and the decree was not,

therefore, validly enforceable in this State.— **38 T. L. R.,** *157*
(=**12 T. L. J.,** *287*).

**14.** No action lies on an executable judgment, the only remedy being by execution, the principle being embodied in Section 238, C. P. C. [new Section 40]. The decree of a Civil Court in British India becomes executable by Courts of Travancore only when the papers referred to in the Rules passed under Section 2 of Regulation IV of 1061 are transmitted by the Civil Courts in British India to the Courts of Travancore for execution. As long as this is not done, an action on such foreign judgment is the only mode of enforcing such judgment.—
**17 T. L. J.,** *90.*

**15.** The plaintiff, a merchant in Tinnevelly, obtained an *ex parte* decree against the defendant, a merchant in Trivandrum, in the Tinnevelly Sub-Court on Pattuvaravu accounts. The decree was transmitted to the Trivandrum Principal Munsiff's Court for execution. The defendant objected to the execution of the decree on the ground that he was a Travancore subject and that he had not submitted himself to the jurisdiction of the Tinnevelly Sub-Court. The Munsiff overruled the objection, but the District Judge on appeal upheld the defence. The plaintiff thereupon filed a second suit in the Trivandrum Munsiff's Court for the recovery of the amount due. The defence was that the suit was barred by limitation.

*Held.*—The time taken in attempted execution in the Travancore Courts of a decree obtained in a British Indian Court which had no jurisdiction should be excluded in computing the period of limitation for a second suit on the same cause of action in Travancore.

*Per Varghese, J.*—The expression 'civil proceeding' is not confined to a suit; it includes appeals, applications, &c. It is used as opposed to criminal proceeding and administrative proceeding. In paragraph 2 of Section 14 also, the expression 'civil proceedings' is used, and it is made applicable to execution proceedings. The execution proceedings in the Trivandrum Munsiff's Court and District Court come within the language of the Section.

Execution proceeding is a continuation of the original suit and it has no cause of action apart from the cause of action for the suit. In this view it cannot be doubted that the execution proceedings were conducted on the same cause of action as the suit within the meaning of Section 14.

When an execution application is dismissed by the Travancore Court on the ground that the foreign Court had no jurisdiction to pass the decree, such dismissal cannot on that ground be deemed to be a decision on the merits. Such dismissal has to be deemed to be a failure of the proceedings, either 'owing to want of jurisdiction' or 'owing to other causes of a formal nature' under Section 14 of the Limitation Regulation. The language employed in the Section is wider (the Indian Act has the expression 'other causes of a like nature') and includes all causes which are not based on the merits of the claim.—
**42 T. L. R.,** *134*
(=**17 T. L. J.,** *184*).

**16.** The Dewan of Cochin, acting under the Cochin Regulation, I of 1081, passed an order removing the Swamiyar of the Naduvile Mutt from the headship of the Mutt. The order cannot be regarded as a foreign judgment, and the Swamiyar does not lose his right to represent the Mutt as regards the properties situated outside Cochin.

It is doubtful whether with reference to the applicability of this latter rule, there is a distinction between cases where there was only an exercise of the sovereign prerogative and cases where there is an exercise of jurisdiction under a statute.—
**44 T. L. R.,** *253*
(=**18 T. L. J.,** *505*).

39. (1) Upon the application of the decree-holder, the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept.

Precepts.

(2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree :

Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.

---

**17.** See also—

Sec. 12.— **14 T. L. J.,** *122.*
**15 T. L. J.,** *140.*

Sec. 19.— **27 T. L. R.,** *167* (=**2 T. L. J.,** *344*).
**38 T. L. R.,** *189* (=**12 T. L. J.,** *109*).

Sec. 55.— **10 T. L. J.,** *347.*

Sec. 39 [ = ,, = *S. 46*]

I. The Notes on Clauses say :—"The provision is new, and is introduced to safeguard the interests of a creditor by giving him a prompt remedy against the judgment debtor."

II. **1.** See Note under the heading, Part II *Supra*, as regards execution by precept.

**2.** In their Report, the Indian Special Committee further say :—" Though a system of execution based on precepts is in the opinion of the Committee open to grave objection, they think the idea may be utilised for the purpose of enabling a decree-holder to obtain an interim attachment where there is ground to apprehend that he may otherwise be deprived of the fruits of his decree. They have for this purpose introduced Clause 46 into the Bill. They think it expedient to fix a time limit for the continuance of this interim attachment, but at the same time they have empowered the Court to extend the period to meet the exegencies of particular cases.

" After careful consideration they have come to the conclusion that, notwithstanding attachment under a precept, re-attachment on the ordinary application for execution will still be necessary. Though at first sight it may appear a better course to provide that re-attachment shall not be necessary when the issue of a precept is followed by the ordinary application for execution, after careful consideration they have come to the conclusion that it will be safer to require re-attachment, having regard to the agency by which execution is carried into effect."

The Select Committee which sat on the Bill, however, altered the provision as regards re-attachment. They said:—"We think that a decree-holder who has obtained an interim attachment should not be required to re-attach the property if before the determination of the attachment he applies for execution against the property, and we have altered this clause accordingly. There will now be only one attachment."

III. For Form of precept, see Appendix E, Form No. 2.

*Questions to be determined by Court executing decree.*

40. (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree or to the stay of execution thereof, shall be determined by the Court executing the decree, and not by a separate suit.

Questions to be determined by the Court executing decree.

(2) The Court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this Section as a suit or a suit as a proceeding and may, if necessary, order payment of any additional Court-fees.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this Section, be determined by the Court.

*Explanation.*—For the purposes of this Section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed, are parties to the suit.

---

Sec. 40 [= S. 238 = *S. 47*]

I. 1. Section 238 of Regulation II of 1065, the same as Section 244 of the Indian Code of 1882, was as follows :—

"238. *Questions to be decided by Court executing decree.*—The following questions shall be determined by order of the Court executing a decree and not by separate suit (namely):—

(*a*) questions regarding the amount of any mesne profits or interest which the decree has made payable in respect of the subject-matter of a suit, between the date of its institution and the execution of the decree or the expiration of three years from the date of the decree ;

(*b*) any other questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree or to the stay of execution thereof.

Nothing in this Section shall be deemed to bar a separate suit for mesne profits accruing between the institution of the first suit and the execution of the decree therein where such profits are not dealt with by such decree.

If a question arises as to who is the representative of a party for the purposes of this Section, the Court may either stay execution of the decree, until the question has been determined by a separate suit or itself determine the question by an order under this Section."

2. See Or. XX, r. 12, for provisions contained in Clause (*a*) of the first para and the second para of Section 238.

II. 1. The new Section reproduces Section 47 of the British Indian Code, the only difference being that, in Sub-section (1), the words "or to the stay of execution thereof" are not found in that Code. They were not in the original Bill, but were inserted by the Select Committee. It may be noted that those words were in Section 238 of the old Regulation.

**2.** In regard to Sub-section (2), the Notes on Clauses say that it "is only a legislative recognition and adoption of the almost universal judicial practice to treat a fresh suit as a proceeding under this Section, and *vice versa*."

III. "Section 238 of the Code of 1065 interdicts the determination of all questions arising between the parties to the suit in which the decree is passed or their representatives and relating to the execution, discharge or satisfaction of the decree or to the stay of execution thereof by a separate suit [*Vide* Clause (*b*)]. The only exception made with respect to this rule is stated to be where a claim for mesne profits between the date of the institution of the suit and the execution of the decree, in cases where the matter is not dealt with thereunder, is made. This provision is substantially embodied in Section 40, Clause (1), of the Code of 1100. The rule has been made absolute in the later Regulation, for, by the express direction therein that all questions of mesne profits have to be decided under the decree itself, the cases falling within the exception under the prior Regulation could not arise."

**19 T. L. J.,** ***649.***

IV. In proposing Section 47 in place of the old Section 244 in the Indian Code, the Special Committee in their Notes on Clauses said :—"The Committee have omitted Sub-clauses (*a*) and (*b*) of Section 244 of the existing Code because they are strongly of opinion that questions regarding the amount of any mesne profits or interest should be determined by the decree and not in execution. If this view is accepted, it will be possible to exercise an effective control over the action taken by subordinate Courts in dealing with such matters.

"The Committee have re-drafted Sub-clause (3) and made it compulsory on the Court to determine questions arising as to representatives of parties. In their opinion, it is inexpedient that separate suits should be instituted for the decision of such questions. The delay and expense involved are often very great and result in the needless protraction of litigation.

"The Explanation is intended to put an end to a conflict of judicial decisions."

---

## Case Law.

### I. QUESTIONS RELATING TO EXECUTION.

**1.** If in execution of a decree for delivery of property, the judgment-debtor is dispossessed of property not covered by such decree, he may bring a regular suit to recover such property.— **3 T. L. R.,** ***33.***

**2.** The Court executing the decree is incompetent to entertain pleas which would materially alter the obligation fixed by the decree (F. B.).— **4 T. L. R.,** ***72.***

Fol. —10 T. L. R., 64.
Dist.—11 T. L. R., 4.
Ref.—18 T. L. J., 668.

**3.** A suit will not lie for damages on account of any tortious deed committed on property subject to execution under a decree of Court. The aggrieved party's remedy is by an application to the Court executing the decree.— **11 T. L. R.,** ***211.***

**4.** Section 238 which must be taken to apply to and govern the procedure of the Court which passed the decree, when executing such decree, and the Court to which the decree is sent for execution, renders it competent for the Court executing the decree to adjudicate on a question of the amount of expenses incidental to execution and sought to be recovered from the judgment-debtor, especially where the question was not raised in and determined by the Court that passed the decree.—

**12 T. L. R.,** ***39.***

**5.** Where the question of the validity of an attachment is one between the parties to the execution and relating to execution, it should be determined under Section 238, Clause (*b*), and not by a separate suit.—

**13 T. L. R.** ***74.***

Appr.—14 T. L. R., 173.

**6.** A plaintiff who is required to pay defendant (a lessee) the value of improvements effected on the property, has a right to demand a reduction for waste committed on it from the value of such improvements. Such demand should be enquired into in execution.— **13 T. L. R.,** *133.*

**7.** Where plaintiffs who had sought for the cancellation of an attachment of property under a decree obtained against a deceased decree-debtor, had admitted that on the death of the decree-debtor, they were made parties to the decree, as the deceased's representatives and had appeared and objected to the decree being executed against them or their Tarwad property:

*Held.*—The plaintiffs' suit for the cancellation of the attachment, after being made parties to the decree as the representatives of the deceased decree-debtor, is not maintainable under the provisions of Section 238, Clause (*b*), of the Civil Procedure Code; and, hence, the plaintiffs are debarred from instituting a separate suit to have a matter arising in execution between them and the decree-holder as parties to the decree, decided.— **13 T. L. R.,** *149.*

Appr.— 14 T. L. R., 173.
Ref. — 2 S. D., 150.
19 T. L. J., 627.
Diss. — 23 T. L. R., 57.
Rel. — 13 T. L. J., 514.
Fol. — 14 T. L. J., 35.
14 T. L. J., 68.

**8.** Objections on the score of non-liability to the sale of property in execution of a decree by one who was a party to the decree should be raised under Section 238 of the Civil Procedure Code in execution proceedings and not by a separate suit.— **14 T. L. R.,** *96.*

Ref. — 19 T. L. J., 627.

**9.** When an Anandaravan is brought in execution of a decree against the Karanavan as his legal representative, the question of the Tarwad liability for the decree-debt on the ground of absence of family necessity and consideration should be determined in execution of the decree and not by a separate suit.

The words of Section 238 are wide enough to cover an enquiry into all the questions which the representative of the deceased Karanavan was entitled to raise. The policy of the Legislature seems also to aim at settling questions of this kind in execution in order to avoid multiplicity of suits (F. B.).— **14 T. L. R.,** *173.*

Ref.—24 T. L. R., 169.
27 T. L. R., 48.
2 S. D., 150.
2 T. L. J., 108.
Fol.—17 T. L. R., 82.
18 T. L. R., 119.
6 T. L. J., 450.
14 T. L. J., 51.
14 T. L. J., 68.
19 T. L. J., 322.

**10.** The question whether a decree has been adjusted and thus rendered incapable of execution is one which the Court executing the decree is bound to determine in execution. "The existence and validity of an agreement before decree, in bar of execution, may be determined under Section 238, and *a fortiori* can the validity of agreements entered into after decree out of Court be determined in execution. Otherwise, the provisions of Section 255 [=Or. XXI, r. 2] would be rendered nugatory."— **14 T. L. R. App.,** *54.*

Fol.—16 T. L. J., 378.

**11.** Plaintiff owed defendant 786⅔ Fs. as costs in a prior suit and in execution of that decree defendant brought to sale plaintiff's property worth Rs. 2,500 and purchased it for 2,500 Fs. In a suit by plaintiff to set aside the auction sale and declare his title and possession or award the value of the property as damages, the Zilla Judge while holding that no separate suit lay for cancelling the sale, awarded damages.

*Held.*—Mere inadequacy of the price realized at an auction sale is no ground for refusing to confirm the sale and a suit to set aside a sale on the ground of fraud would come under Section 238, Civil Procedure Code (F. B.).— **21 T. L. R.,** *206.*

Ref.—19 T. L. J., 322.

**12.** In a suit brought by the Karanavan of a Marumakkathayam Tarwad to set aside the attachment and proclamation for sale of Tarwad properties in execution of a money decree obtained against certain junior members of the Tarwad wherein the Karanavan had been impleaded as a party defendant as the representative of a deceased junior member and wherein though attachment before judgment had been placed on the properties, the decree passed was only against the surviving junior member and the assets of the deceased junior member but exonerating the Tarwad properties from liability:

*Held.*—The remedy of the plaintiff was by separate suit and not by application under Section 238, C. P. C., as though the plaintiff Karanavan had been impleaded in the suit as the representative of a deceased junior member, the decree having exonerated the Tarwad properties from liability, he (the Karanavan) is not a party to the decree within the meaning of Section 238, C. P. C.

The decree having exonerated the Tarwad properties from liability, the attachment before judgment placed on the said properties was extinguished, and therefore the plaintiff's suit was not time-barred.— **23 T. L. R.,** *57.*

Ref.—23 T. L. R., 214.
Dist.—18 T. L. J., 514.

**13.** Certain properties were taken on mortgage in the name of the mother of the defendants, for the benefit of the Tarwad consisting of the mother and children and whereof the 1st defendant was Karanavan. The mortgagor obtained a decree for redemption against the mother alone. The mother—decree debtor—died soon after execution was sought against her. The first and second defendants were impleaded in execution as the legal representatives of the mother and proceedings were adopted for obtaining delivery of possession of the property. The contention of the legal representatives was that the property in question being Tarwad property and the Karanavan not having been a party to the prior decree the decree could not be executed. In a suit brought by mortgagor for redemption against the mortgagee's Tarwad members including the Karanavan thereof, it was contended that the mortgagor's remedy had been by way of appeal against the prior order disallowing execution and that the order under Sec. 238, disallowing execution of the first decree was a bar to the present suit.

*Held.*—Though the prior order was one passed under Sec. 238, that order was no bar to the present suit inasmuch as that order only decided that the first decree did not bind the defendant's Tarwad and not that the plaintiff had no right to redeem the properties from defendant's Tarwad. The present suit was one ignoring the first decree altogether and did not want that decree to be referred to at all as establishing any rights as between the parties and hence the latter was no bar.

The defendants having in execution proceedings of the first decree contended that that decree was not binding on the Tarwad was estopped from raising the contention that the former decree was binding on the Tarwad and that the plaintiff's remedy was by way of appeal against the order disallowing execution at their instance.— **23 T. L. R.,** *214.*

Ref.—19 T. L. J., 322.

**14.** When the mortgage decree does not provide for delivery of possession of the mortgaged property on payment of the decree amount, the Court cannot, in execution proceedings, order delivery of possession.— **25 T. L. R.,** *131.*

**15.** The plaintiff's father obtained a decree against the defendants for arrears of Michavarom due on the plaint property which was being enjoyed on Adima Tenure by the family of defendants from that of plaintiff and in execution brought to sale, and himself purchased in Court auction, the rights of the defendant's family on the plaint property. The present suit was for recovery of possession of the property purchased.

*Held.*—Proceedings by the auction purchaser by virtue of his auction purchase to obtain possession were proceedings relating to the execution, discharge or satisfaction of the decree within the meaning of Section 238. The mere fact that the decree-holder had become the auction-purchaser did not divest him of his character of decree-holder so as to make any questions arising between himself and the judgment-debtor other than questions between the parties to the suit in which the decree was passed. A separate suit was, therefore, barred under the said Section.—

**26 T. L. R.,** *246.*

Ref.—36 T. L. R., 22.
38 T. L. R., 39
(= 12 T. L. J., 72).
38 T. L. R., 291
(= 13 T. L. J., 79).
15 T. L. J., 431.
19 T. L. J., 649.
Dist.—27 T. L. R., 139.
29 T. L. R., 166.
Fol.— 6 T. L. J., 22.

**16.** Suit by Seshakars of the judgment-debtor to cancel sale of Tarwad property on the ground of irregularity and fraud in the conduct of the sale.

*Held* (In confirmation of the decree of the lower Court).—The plaintiff was bound to have made his application under Section 238, and a separate suit is barred. The defendant, who is a transferee of the decree and also the auction-purchaser, is not deprived of his position as a decree-holder by s becoming the auction-purchaser. Th plaintiff is a representative of a party the decree within the purview of Sectio 238. If there was an irregularity or frau in the service of the notice, that was a ma ter to be inquired into under Section 3( [= Or. XXI, r. 87], and even if there w an irregularity in the service of notice th was not a ground for setting aside the sale.

**4 S. D.,** *20*

**17.** Plaintiff as auction-purchaser of tl rights of the 1st defendant, a member of joint Hindu family, sued to recover fro defendants, the members of the famil certain properties being the undivided 1 share of the 1st defendant. It was foun that there were other properties in tl family which were not included in the su It was contended that Section 238 operat as a bar and that the suit was bad as bei one for partial partition.

*Held.*—A purchaser in Court-auction the share of a co-parcener of a joint Hin family acquired only a right to sue for pa tition and for delivery to him of what m be allotted to the share of such individu member. As the execution Court could nc on an application by the auction-purchase pass an order for enforcing partition, Se tion 238 did not operate as a bar to the su

An auction-purchaser of the interest one or more members of a joint Hin family of certain items of the family pr perty cannot enforce a partition of tho items alone against the will of other me bers, without suing for a general partitio of the entire family property.—

**27 T. L. R.,** *138*
(= **2 T. L. J.,** *325*

**18.** Where a personal decree on a h pothecation bond was obtained against tl late Karanavan as representing his Tarwa the succeeding Karanavan pleading *int alia* absence of consideration for the bo in resistance to the execution of the decre was not bound to prove the issue, the *on* of proof ordinarily resting on the credito The fact that the question of consideratio

was agitated by an application under Section 238 rather than in a regular suit did not make any difference as to *onus* of proof.— **28 T. L. R.,** *170.*

**19.** Delivery of symbolical possession of property, purchased in execution sale, operates to give the person so put in possession a fresh cause of action. Consequently, a suit by a decree-holder—auction-purchaser, who has obtained through Court symbolical delivery of possession of the property purchased by him, for recovery of possession of the same from a person in actual possession of it under a title derived from the judgment-debtor subsequent to the attachment but before the auction-sale in execution of the decree, is not barred under Section 238 of the Civil Procedure Code, even though he could have obtained actual possession under Section 315 [ = Or. XXI, r. 92 ], inasmuch as the proceedings in execution ended with the delivery of formal possession and there was nothing further for the execution Court to do in the matter.

Under Article 121 of the Limitation Regulation such a suit may be brought within 12 years from the date of obtaining such symbolical possession.— **29 T. L. R.,** *166.*

**20.** An order refusing to adjourn an execution sale is not a decree and is, therefore, not appealable.— **29 T. L. R.,** *200.*

**21.** P obtained a decree for redemption, and in execution of it, the Court Amin made delivery of possession of the properties to P and drew up a report to that effect. But subsequently the Amin made certain interpolations in the delivery *Kychit,* the effect of which was to deprive P of some of the properties delivered to him by the Amin. P then petitioned to the execution Court about the interpolations but his petition was rejected. On appeal by P the District Judge agreed with the contentions raised in the petition but dismissed the appeal on the ground that the order passed by the lower Court was not one which fell under Section 238, inasmuch as the execution had already become final.

*Held.*—The execution of the decree could not be held to be complete until the delivery had been perfected. That could only be when the delivery *Kychit* and the report had been accepted by the Court, and then only if they were untainted by fraud or collusion, the order appealed against was one passed under Section 238, and was as such appealable.— **30 T. L. R.,** *5*
( = **4 T. L. J.,** *13*).

Ref.—38 T. L. R., 39
( = 12 T. L. J., 72).
38 T. L. R., 291
( = 13 T. L. J., 79).
Fol.—6 T. L. J., 22.

**22.** A Marumakkathayam Tarwad was enjoying on lease a property belonging to Government. Under an arrangement for maintenance, the said property was allotted to the plaintiff's branch. Plaintiff sued and obtained a decree for recovery of possession of the property and, in execution of the decree, he was put in possession of the same. After the decree but before the delivery of possession, defendant obtained a fresh lease regarding this property from Government. He applied to the execution Court to re-deliver the property to him on the ground that he held it under a new lease.

*Held.*—The application of the judgment-debtor for re-delivery of possession of the property was not one under Section 321, [ = Or. XXI, rr. 97, 98 & 100 ], Civil Procedure Code. Nor could it be treated as one under Section 238 of the Code, as the question raised by the appeal was not one relating to the execution, discharge or satisfaction of the decree.

"Every question between the parties to a decree about the property which is the subject-matter of the suit is not necessarily a question relating to the execution, discharge or satisfaction of the decree. Such a question must be one in respect to the furtherance

of, or hindrance to, or the manner of carrying out the execution of the decree.—

**30 T. L. R.**, *205*
(= **4 T. L. J.**, *329*).

**23.** It was contended in the execution of a decree that the value of improvements awarded by the decree had diminished owing to the destruction of some of the plantations for which value had been awarded. The execution Court refused to go into that contention.

*Held.*—The execution Court was bound to go into the question in regard to the diminution in the value of improvements.—

**30 T. L. R.**, *245.*

Rel.—18 T. L. J., 1280.

**24.** Plaintiff sued on a mortgage praying for a decree directing the sale of the mortgaged properties. There were three items of properties covered by the mortgage, but the plaint schedule gave boundaries of only one, though the extent given covered all three. The decree directed the sale of the plaint property and the sale was held in terms of the plaint schedule. Plaintiff, decree-holder, purchased the properties in auction. The mistake as to the boundaries was found out only when plaintiff took steps to obtain possession. He then applied for a correction of the description of the boundaries in the sale certificate so as to include all the three items covered by the mortgage deed. The application was granted. On appeal by the judgment-debtor, it was contended on behalf of the plaintiff, decree-holder, that no appeal lay against the order of the Court below.

*Held.*—The order passed by the Court below correcting the description of the boundaries in the sale certificate was one under Section 238 and was therefore appealable.

The execution of a decree cannot be said to be complete until the delivery has been perfected, and in the present case the alteration required by the plaintiff was obviously necessary in order to enable him to obtain possession of the properties which he claimed to be entitled to under the sale.

"It seems definitely established that the mere fact that the decree-holder has become the auction-purchaser does not divest him of his character of decree-holder so as to make any questions arising between himself and the judgment-debtor other than questions between the parties to the suit, in which the decree is passed and that a separate suit is therefore barred under the Section."

(2) What actually passed by the auction sale was only the property within the boundaries mentioned in the sale proclamation.

"Though the Court had inherent powers to correct its own mistakes, it had no power to correct the mistake of the parties. That the failure in this case to bring to sale the whole properties mortgaged was due to the plaintiffs' mistake first made in the plaint schedule and thereafter repeated, and therefore the order appealed against was made without jurisdiction.

"Where there is a description of land in a conveyance, lease or other document such a description setting forth the boundaries, and then specifying the quantity, as so many acres or bighas, or the like, the maxim *falsa demonstratio non nocet* applies: it is considered to be a mere false description if there is an error in the quantity, and the land within the boundaries passed by the conveyance or the lease, whether it be less or more than the quantity specified."—

**6 T. L. J.**, *22.*

Ref.—38 T. L. R., 39
(= 12 T. L. J., 72).
38 T. L. R., 17
(= 12 T. L. J., 278).
38 T. L. R., 291
(= 13 T. L. J., 79).
14 T. L. J., 203.
15 T. L. J., 371.
15 T. L. J., 431.
19 T. L. J., 649.
19 T. L. J., 803.

**25.** The question as to the amount of security to be given by the defendant as the condition of stay of execution of a decree against him is a question relating to execution within the contemplation of Section 238, Clause (*b*). Therefore, an order determining that question is appealable.— **33 T. L. R.,** *56* (= **7 T. L. J.,** *276*).

Ref.—18 T. L. J., 527.

**26.** An order that the exact amount due under the decree would be ascertained on a subsequent date, after hearing both parties, is an interlocutory order and cannot be said to fall within the purview of Section 238, C P. C. so as to make it appealable.— **8 T. L. J.,** *202.*

Fol.—38 T. L. R., 236 (= 12 T. L. J., 70).
Not appl.—42 T. L. R., 277 (= 15 T. L. J., 488).
Ref.—43 T. L. R., 429 (= 19 T. L. J., 491).

**27.** In execution of a hypothecation decree obtained by the former representatives of a Village Samudayam, the plaint property was purchased by one of them on 18-2-1077. The sale was confirmed on 19-3-1077. In Kumbhom 1085, the decree-holder, auction-purchaser, applied for and obtained the sale-certificate. On 26-1-1089, *i. e.,* within 6 years of the application for sale certificate, the present representative of the Samudayam sued to obtain possession of the property. The primary Court treated the plaint in the suit as an execution application and held that the application was within time. The lower Appellate Court, however, held that the application was barred by limitation.

*Held* (on special appeal).—(1) The plaintiff's application was a matter relating to execution of the decree obtained by the Samudayam to be dealt with under Section 238 C. P. C.

(2) An application for issue of sale certificate is a step in aid of execution.

(3) An application by a decree-holder auction-purchaser, to be put in possession of the property purchased by him is an application for execution of a decree and falls under Art. 153 of the Limitation Regulation.

(4) Under Art. 153 of the Limitation Regulation the application was within time, having been made within six years of the date of the application for obtaining the sale certificate.— **36 T. L. R.,** *22.*

Ref.—13 T. L. J., 462.
18 T. L. J., 1342.
19 T. L. J., 640.
Fol.—42 T. L. R., 302 (= 16 T. L. J., 330).
18 T. L. J., 632.

**28.** The appellant obtained against his Kanom tenant a decree for arrears of Michavarom and in execution of his decree purchased the Kanom holding at court sale. When he attempted to obtain delivery through Court, he was resisted by the respondent who had, in execution of a hypothecation decree obtained by him against the judgment-debtor some time before the institution of the Kanom suit, purchased the Kanom holding during the pendency of the Kanom suit and obtained possession through Court subsequent to the decision of the Kanom suit.

The appellant moved for the removal of the obstruction.

*Held.*—(1) The respondent who purchased the Kanom right before the appellant instituted his suit based on a hypothecation bond of a still earlier date, cannot be treated as the representative of the judgment-debtor within the meaning of Section 238.

(2) Obstruction to delivery may properly be regarded as relating to the execution of the decree.

(3) A decree-holder who is also the auction-purchaser does not for that reason cease to be decree-holder.

(4) A transferee of the interest of the judgment-debtor in order that he may be

clothed with the legal character of his representative must be bound by the decree.

(5) The obstruction and the application to remove the obstruction falls under Section 324 [ = Or. XXI, rr. 94-98 ], and no appeal lies from the order of the lower Court (F. B.).— **37 T. L. R.,** *53* ( = **10 T. L. J.,** *459* ).

Ref.—38 T. L. R., 291 ( = 13 T. L. J., 79).
19 T. L. R., 649.

**29.** The defendant held certain properties on Kanom from the plaintiff, and for arrears of Jenmi dues the plaintiff obtained a decree. In execution of that decree the Kanom holding was sold and the plaintiff himself purchased it in 1089, and obtained delivery of possession through Court in Chingom 1095. The present suit was instituted for the recovery of mesne profits for the three years preceding the suit. The defendant contended that the suit was not maintainable by reason of Section 238 of the Civil Procedure Code, that the mesne profits claimed were excessive, and no interest on mesne profits could be awarded.

*Held.*—The suit did not come within Section 238 as the question involved in the suit did not relate to the execution, discharge or satisfaction of the decree. The plaintiff obtained possession of what he had purchased: that completed the execution of his decree: and the further aid of the Court was not contemplated by any provision of the Code in regard to that decree. He was asking for compensation for a trespass committed by the defendant, and there was no connection between that trespass and the execution of the decree.

Even when the decree was for possession of property, a separate suit for mesne profits accruing between the institution of the first suit and the execution of the decree was expressly saved by Section 238.— **38 T. L. R.,** *39* ( = **12 T. L. J.,** *72*).

**30.** An application by the judgment-debtor to set aside the execution sale on the ground of the fraud of the decree-holder—auction-purchaser—comes within the scope of Section 238.— **38 T. L. R.,** *82* ( = **11 T. L. J.,** *438*).

Ref.—18 T. L. J., 952.

**31.** A decree for maintenance awarded 1½ Kottahs of paddy per mensem for E and her two minor sons, who were the plaintiffs in the suit. E died and the other two surviving decree-holders sought to execute the decree for the entire amount awarded by the decree.

*Held.*— The surviving decree-holders were entitled to realise by execution only their proportionate share.

Though in form the decree was a joint decree, it was in fact three decrees consolidated into one and conferred separate divisible rights on the decree-holders which were not heritable; and when the right of any one of the decree-holders became extinguished, the rights of the others were left intact.— **38 T. L. R.,** *219* ( = **12 T. L. J.,** *46*).

Ref.—16 T. L. J., 350.
19 T. L. J., 851.

**32.** Plaintiffs obtained a decree for money against the 3rd defendant, impleaded as the representative of a deceased Karanavan. In execution certain properties were purchased by the plaintiffs, decree-holders, and the sales were confirmed. Before delivery, the 3rd defendant objected that the properties attached and sold were Tarwad properties and were not liable for the decree amount.

The decree-holder contended that, after confirmation of the sale, though delivery of the property had not taken place, as the title to the property had vested in the auction-purchaser under Section 313 [new Section 57], the sale could not be set aside at that stage.

*Held.*—The sale could be questioned.

[illegible library stamp]



*Per Chatfield, J.*—It is clear law that, until delivery of the property has been effected as a result of the sale by Court auction, the Court executing the decree must decide all questions arising between the parties to the suit in which the decree was passed. Execution of the decree cannot be complete, until delivery of the property has been effected. The mere fact of the decree-holder having become an auction-purchaser under a Court-sale in execution of a decree, does not divest him of his character of decree-holder so as to make any question arising between him and the judgment-debtor other than questions arising between the parties to the suit in which the decree is passed. It is further clear that when a junior member of a Tarwad who has been impleaded as the legal representative of the Karanavan wishes to object to the sale of Tarwad property in execution of a decree obtained against the Karanavan, he should do so by means of an application under Section 238, and not by a separate suit.

*Per Sesha Aiyar, J.*—A decree-holder who is also the auction-purchaser does not for that reason cease to be decree-holder, and obstruction to delivery of property purchased in Court-auction may probably be regarded as relating to the execution of the decree. The decree-holder having been *ex vi termini* a party to the cause all along up to the date of sale, there is no reason why the auction sale should be regarded as marking a point of cleavage in his legal character, so as to necessitate his figuring at the time of delivery of possession as somebody else than the decree-holder.

A proceeding in execution cannot be said to be completed, so far as the decree-holder is concerned, in a case of sale until he has obtained the proceeds and benefit of the sale held in execution of his decree, where the purchaser is a stranger or where he is himself the purchaser, until he is put in possession of the property of his judgment-debtor which he has purchased and which represents money.— **38 T. L. R.,** *291* (=**13 T. L. J.,** *79*).

Rel.—13 T. L. J., 514.
Ref.—18 T. L. J., 485.

**33.** *Per Sesha Aiyar, J.*—In a case where a party, instead of applying under Section 238 of the C. P. C., wrongly brought a suit, the plaint can be treated as an application under Section 238, when no question of limitation arises.

Understatement of value in the sale proclamation may afford a good ground for an application under Section 308 [ = Or. XXI, r. 87 ].

Such irregularity, though it may not always amount to fraud, may do so on the facts and circumstances of a particular case.

Fraud must be reserved for that which is dishonest or morally wrong.

If the conduct of the decree-holder in connection with the sale can hardly be consistent with good faith and if the obvious effect of his act would be to mislead possible bidders and prevent them from offering a reasonable price, the understatement of value amounts to fraud.

*Per Palpu Pillai, J.*—Where the plaint not only prayed for setting aside the auction sale but also asked for other reliefs against defendants other than the auction-purchaser and the nature of the reliefs is undoubtedly such that they can be claimed only in a regular suit, it cannot be converted into an application under Section 238.

An understatement of value by itself is not sufficient to justify an inference of fraud. If that were the law, few execution sales would be secure.

Erroneous statements in proclamation schedules are not incompatible with good faith on the part of the decree-holder and do not *per se* suggest or lead to the inference that he has committed a deliberate wrong to injure anybody.

Any person who is anxious or cares to bid at a Court-sale generally makes himself acquainted with the particulars, value and nature of the property before he does so and is not in the least influenced by the statements in the proclamation schedules.

*Per Chief Justice.*—A mistake as to price in the proclamation of sale of the value of the properties brought to sale, is an irregularity and may amount to material irregularity in many cases ; but it does not necessarily follow that an auction sale, had in pursuance of that proclamation, is vitiated by fraud.

To amount to fraud, there must be evidence to show that the understatement of value prevented or scared away intending bidders. **13 T. L. J.,** *462.*

**34.** Objection to attachment by the person impleaded in the place of the deceased Karanavan, judgment-debtor, on the ground that the decree was not binding on the Tarwad must be treated as a petition falling within the scope of Section 238.—

**14 T. L. J.,** *68.*

Ref.—19 T. L. J., 627.

**35.** The question of restoration of excess property delivered in execution is a question relating to execution and an application for relief should be made only to the execution Court. A separate suit is not maintainable. But a subsequent plaint filed may on proper occasion be treated as an execution application.— **14 T. L. J.,** *134.*

**36.** The question whether the decree-holder has realised in execution anything more than the amount that is actually due to him, is clearly one relating to the execution, discharge or satisfaction of the decree.

A decree-holder who has by mistake realised less than what was due to him, by an execution sale, is not precluded from executing his decree for the balance. If the decree-holder is not so precluded, there is no reason, why, in the converse case, a judgment-debtor should not obtain restitution of any amount that is levied from him in excess.

Execution continues even after an auction sale.— **14 T. L. J.,** *203.*

Ref.—43 T. L. R., 212
(=17 T. L. J., 356).
18 T. L. J., 485.
18 T. L. J., 1088.

**37.** Where the Court is misled into recording a satisfaction of a decree by the fraud of the judgment-debtor, an application for execution of the decree on the ground that the certificate of satisfaction is fraudulent, is one that falls within Section 238. It is always competent to a Court to vacate any judgment or order if it be proved that such judgment or order was obtained by manifest fraud.— **14 T. L. J.,** *218.*

**38.** Where a decree-holder purchases in execucion a share of property common to judgment-debtor and others which, at the time of the purchase, has already been ascertained, such auction-purchaser has no right to institute a separate suit for possession of the property purchased by him in execution but is bound to seek his remedy under Section 238.— **14 T. L. J.,** *356.*

**39.** To bring an order under Section 238, two conditions are necessary. First, the order should relate to a question between the parties to the decree, and secondly, the order should be one relating to the execution, discharge or satisfaction of the decree.

When a person, *non compos mentis*, is not properly represented in a suit, he cannot be regarded as a party to the decree under Section 238. When the existence of a valid decree is disputed in execution under Section 220 [=Or. XXI, r. 6], the question thereby raised does not come within the purview of Section 238.— **14 T. L. J.,** *402.*

[See Note under Or. XXI, r. 6]

**40.** The question whether a decree has been adjusted and thus rendered incapable

of execution is one which the Court executing the decree is bound to determine in execution under the terms of Section 238.—
**16 T. L. J.,** *378.*

**41.** An execution Court cannot consider the question of the validity of the decree. The decree is final as between the parties until it is set aside in one of the various ways known to law.

The Court has jurisdiction to record a compromise when it is satisfied as to the existence of the compromise, and the decree, though erroneous, will bind the parties until vacated.— **42 T. L. R.,** *353.*

**42.** The execution Court has jurisdiction to determine the damages on account of waste committed between the date of decree and the date of delivery of the property, as the assessment of such damages would be a matter relating to the discharge or satisfaction of the decree within the meaning of Section 40.

The mere fact that an entry of full satisfaction has been made in execution proceedings could not *per se* constitute the Courts *functus officio*, as the Courts have a right to deal with applications, if otherwise maintainable. Such a right could not be said to be non-existent, merely because, as the records stand, nothing remains to be done in execution.—**44 T. L. R.,** *424*
(=**18 T. L. J.,** *1280*).

**43.** An investigation into the extent of a debt which is due to the judgment-debtor and attached by the decree-holder in execution of his decree and with respect to which there is a dispute between the decree-holder and the debtor will not fall within the purview of Section 40. If the extent of the debt is not disputed and the same is produced in Court, the same may be allowed to be paid to the decree-holder in execution. In other cases, the decree-holder would have either to get himself appointed as receiver for the collection of the debt in execution or purchase the right under the debt in Court auction and file a suit for the enforcement of the debt.

Section 275 [ = Or. XXI, r. 56 ] does not apply to attachment of debts.—
**19 T. L. J.,** *318.*

**44. 1.** Questions relating to delivery of possession between decree-holder—auction-purchaser and judgment-debtor or his representatives fall within Section 238. From an analysis of the precedents, the law as settled by the decisions of the High Court may be summarised as follows:—

(1) The proceedings in execution could not be taken to be completed till delivery of possession of the property sold in execution is effectively made.

(2) The decree-holder is not divested of his character as such by reason of his becoming the auction-purchaser himself.

(3) All questions between him and the judgment-debtor or his representative relating to the execution of the decree, even after the date of the auction purchase by the decree-holder will fall within the purview of Section 238.

(4) Questions relating to the delivery of possession between the decree-holder—auction-purchaser and the judgment-debtor or his representative will also fall under the above Section. But if such questions arise between third parties and decree-holder—auction-purchaser, Section 238 will not apply.

(5) Section 324 [= Or. XXI, rr. 94, 98 and 100] is controlled by Section 238, and should not be taken as depriving the parties of a right of appeal otherwise available.

2. Even after dismissal of a prior application under Section 317 [=Or. XXI, r. 94] on the ground of his not having come within 30 days as prescribed therein, it is open to the applicant to put in a fresh application for delivery of possession under Section 315 [= Or. XXI, r. 92] ignoring the prior proceedings.— **19 T. L. J.,** *649.*

45. See also—

Sec. 108— **35 T. L. R.,** *268* (= **9 T. L. J.,** *430*).
Or. XX, r. 12.—**28 T. L. R.,** *129* (= **2 T. L. J.,** *478*).
**33 T. L. R.,** *281* (= **7 T. L. J.,** *326*).
„ XXI, r. 2.—**14 T. L. R. App.,** *54*.
„ „ r. 13.—**23 T. L. R.,** *245*.
„ „ r. 86.—**38 T. L. R.,** *241* (= **12 T. L. J.,** *162*).
„ „ r. 87.—**18 T. L. J.,** *952*.
„ „ r. 94.—**18 T. L. R.,** *157*.
**25 T. L. R.,** *248*.

## II. PARTIES AND REPRESENTATIVES.

1. Under Section 267 of the old C. P. C., (Regn. II of 1087), a party to a decree, in execution of which he is dispossessed of his property, has clearly the right of appeal. An assignee of a decree is as much a representative of the original decree-holder as the heirs-at-law, or persons to whom the decree has been lawfully transferred, and no distinction is recognized by law between the assignee of a decree and the original decree-holder.

Where an order is based on a decree which is subsequently reversed in appeal, the proceedings taken thereunder also must fall to the ground, and a fresh suit is unnecessary to recover property transferred under such decree; the Civil Procedure Code does not contemplate the sale of decrees for immovable property (F. B.).— **5 T. L. R.,** *1*.

Fol.—7 T. L. R., 109.

2. The question of the liability of a puraidom in dispute for the defendant's decree-debt, being one that had arisen in the execution of the decree in a previous suit to which the present parties were parties arrayed on opposite sides as in this suit, and the same question being raised by the plaintiff and decided against him by the Court executing that decree, the only course open to the plaintiff was to have preferred an appeal against that orde under Section 267 of the old Civil Proce ure Regulation, no separate suit to try an determine that same question being pe mitted by law.

*Held*.—The decree being against his inte est in the property also, *i. e.*, the equity redemption, and he being the decree-debt under the decree, all proceedings under th Civil Procedure Code incidental to ex cution, should be taken against him, in th his exemption from personal liability d not make him less a party to the suit decree or the execution proceedings.— **7 T. L. R.,** *1*

Ref.—19 T. L. J., 627.

3. The question having been refer to a *Full Bench* whether a suit would lie set aside an order passed in execution p ceedings making the representatives deceased judgment-debtor liable to a dec passed against the debtor personally, on ground that the representatives were possession of assets belonging to the es of the deceased;

*Held*.—An order passed in an enq held under Section 227 of the Civil Pr dure Code [new Section 43] falls u Clause (*b*) of Section 238, and thus decree under Section 2 of the Code; therefore, the suit is not maintainable.

The case is distinguishable from the cision reported at 4 T. L. R., p. 72, w the question at issue was the *nature* o decree-debt, and the decision itself under Section 267 of the old Code of Procedure; while in the present case the liability or non-liability of plaint the decree-debt that was adjudicated by the execution Court.— **11 T. L. I**

4. Where money realised in exec of one decree was ordered to be paid holder of another decree:

The order is one as between rival d holders and does not fall under Sectio Such an order does not fall within th "decree" as defined by that Code. No

or special appeal lies against such an order and the remedy of the party aggrieved thereby, is a suit for refund of the money wrongly paid under Section 292, Civil Procedure Code [new Section 50].—

**11 T. L. R.,** *161.*

**5.** The question having been referred to a Full Bench whether a regular suit could be instituted by a *bona fide* purchaser for value, for the cancellation of a sale of property held under a decree which had been satisfied out of Court but the adjustment of which had not been certified to the executing Court under Section 255, C. P. C. [=Or. XXI, r. 2]:

*Held* (*Govinda Pillai, J.*, dissenting).—A suit does not lie to set aside a Court-sale held under a decree adjusted out of Court, and not certified to the Court (F. B.).—

**13 T. L. R.,** *10.*

Ref.—26 T. L. R., 83
( = 1 T. L. J., 284).

**6.** Where the question of the validity of an attachment is one between the parties to the execution and relating to execution, it should be determined under Section 238, Clause (*b*), and not by a separate suit.—

**13 T. L. R.,** *74.*

Appr.—14 T. L. R., 173.

**7.** The purchaser of a property (sold by the appellants in satisfaction of a decree-debt due by their father) against whom fraud was alleged was not and could not be made a party to the execution proceedings, and the question of fraud or fraudulent preference was therefore a matter which the plaintiff should agitate in a regular suit.—

**14 T. L. R.,** *198.*

**8.** Objections under Section 238 could only be raised in execution by the parties to the decree or their assigns.—

**15 T. L. R.,** *107.*

**9.** A decree granted reliefs separately against each property. The holder of one of the properties deposited in Court the proportionate debt charged upon that property. The Court, in spite of the deposit, sold the very property along with others for the realisation of the remaining portion of the debt. In the appeal preferred by the depositor to cancel the sale as illegal, it was contended by the purchaser that the debt alluded to in Section 288 meant the whole of the decree debt and not a portion of it, that the purchaser not being a representative of any of the parties to the suit. Section 238 would not apply and therefore, no appeal lay in the case.

*Held.*—The said deposit came within the meaning of "debt" under Section 288 [=Or. XXI, r. 67] and therefore, the sale was illegal.

A purchaser who was not a party to the suit in which the decree under execution was passed was a representative in interest of the judgment-debtor and as such, he was a party to execution under Section 238 and, therefore, the appeal was maintainable.—

**16 T. L. R. App.,** 3.

Fol.—20 T. L. R., 151.
26 T. L. R., 246.
Ref.—2 S. D., 185.

**10.** Plaintiffs 1 to 6, members of a Marumakkathayam Tarwad sued for establishing the non-liability of the Tarwad property for attachment and sale in satisfaction of a decree-debt due by their deceased relative. The first plaintiff was alone made the legal representative of the deceased in the execution proceedings and he did not then raise his objection to the attachment. The District Judge, on the authority of the decision in 14 T. L. R., 173, dismissed the suit on the ground that the question of Tarwad liability should be determined in execution of the decree under Section 238 and not by a separate [illegible].

*Held.*—Plaintiffs [illegible] 6 who had not been impleaded by the decree-holder as legal representatives of the deceased in the execution proceedings were not debarred from bringing a fresh suit for establishing the non-liability of the Tarwad property for sale in satisfaction of the deceased's debt.

The irregularity involved in presenting the objection to the execution of a decree against certain property in the form of an application under Section 238 was not fatal to the validity of the decree actually passed after trial on the merits of the question involved in the objections.— **17 T. L. R.**, *82*.

Ref.—9 T. L. J., 19.
13 T. L. J., 462.
Dist.—2 S. D., 141.
Overruled.—40 T. L. R., 151.

**11.** Junior members of a Marumakkathayam Tarwad are, in the absence of fraud, bound by a decree obtained against a Karanavan and manager of the Tarwad and they should be treated as parties to the decree-execution and not as strangers, any claim put forward by them being a matter for enquiry under Section 238.

Where a decree has been obtained by fraud practised upon the opposite party by which he was prevented from placing his case before the tribunal which was called upon to adjudicate upon it in the way most to his advantage, then the decree may be set aside; but a simple allegation that a decree is wrong or that the suit or defence was not conducted with due care or diligence or that the evidence adduced was conflicting and unsatisfactory or that there was other available evidence which, if tendered, would have turned the scale to one's favour, cannot be acted upon.—

**18 T. L. R.**, *20*.

Ex.— 19 T. L. R., 208.
Ref.— 24 T. L. R., 169.
40 T. L. R., 151.
Dist.— 2 S. D., 141.
Fol.— 2 T. L. J., 475.
Not fol.—16 T. L. J., 550.

**12.** The mortgage interest acquired by a deceased Ezhava was divided between his son and nephew A and C, respectively, by a suit of 1063. D, one of the heirs of the original mortgagor obtained on his death, a decree in 1067, for the partition of the said mortgage and other properties of the family; but pending that suit, D, in anticipation of success hypothecated his moiety to E, who eventually got a decree on the hypothecation deed, attached D's right on the 15th Meenom 1071 and himself purchased the equity of redemption. In the meantime, X, another member of D's branch, sued E for the cancellation of his decree, 5 days after the said attachment and on the 21st Edavom 1071 moved the execution Court to stay the sale proceedings taken out by E and also the District Court to issue an injunction under Section 471, [=Or. XXXVII, r. 1] C. P. C. But these petitions were rejected and the sale to E was confirmed on the 22nd *Idem*. X, however, got a decree in his favour, declaring that the decree obtained by E and the hypothecation deed upon which it was based were *null* and *void*; but in spite of this, E got delivery of the property and certificate of sale on the 17th Kanni 1072. X then sold to Y the right to redeem the property from A, the son of the deceased Ezhava, while E, on the other hand, purchased A's share of the mortgage lien. The suit was by Y for redemption from E. The lower Court dismissed the suit and the District Judge was of opinion that X, the vendor of Y, should have moved the execution Court which executed the decree obtained by E, to set aside the sale under Section 238.

*Held.*—The Judge was wrong, as neither Y nor his vendor was a party to the said decree and, therefore, the only remedy of Y was a regular suit and not to re-open the question under Section 238.

E's sale right could not stand, since the foundation of it, *viz.*, the decree obtained against D, the heir of the original mortgagor, was set aside, such sale having been subject to the ultimate result of the suit instituted by X another member of D's branch:

Art. 8 of the Limitation Regulation (old) as amended by Section 15 of Regulation V of 1068 excludes from its operation a suit, like this, brought as it was to set aside a sale on the ground that the judgment-debtor had no saleable interest in the property.

The doctrine of *lis pendens* did apply to the purchase by E who must be taken to have purchased *pendente lite* within the meaning of Section 52 of the Transfer of Property Act.— **18 T. L. R.,** *86.*

**13.** In execution of a decree the heirs of a judgment-debtor can raise any pleas against the decree, as if a separate suit had been instituted (F. B.).— **18 T. L. R.,** *119.*

Fol.—7 T. L. J., 450.

**14.** The representatives of a deceased judgment-debtor who was the Karanavan of a Malabar Tarwad could, in execution of a hypothecation decree, be allowed to resist the sale of the hypotheca on the ground that the debt for which the decree was passed was not binding on the Tarwad (F. B.).

*Per Ramachandra Row, J.*—There is nothing opposed to sound principle in allowing a question of this sort to be settled in execution. To compel the judgment-debtor's representative to raise his objection in execution proceedings themselves, to the validity of the decree-debt in cases of money decrees pure and simple, and to require him to go to a separate suit for relief if the decree charges the money on any property, appear to be opposed to principle.

*Per Sadasiva Iyer, C. J.*—(1) In the matter of procedure, it is better to follow the precedents of this Court in preference to those of other Courts.

(2) Section 238 C. P. C., Clause (*b*), seems to have been purposely worded in the most general manner by the Legislature in order to allow parties as much as possible to have all their disputes settled in execution provided they could be said to relate to the execution of the decree (F. B.).— **24 T. L. R.,** *169.*

Ref.—30 T. L. R., 224
(=5 T. L. J., 134).
13 T. L. J., 349.
Fol.—19 T. L. J., 322.

**15.** A party to the suit who has been exonerated from liability under the decree where his co-defendant alone is made liable is not a party to the decree within the meaning of Section 238, C. P. C.

A suit by the exonerated defendant to cancel an attachment placed on his properties is maintainable.— **2 S. D.,** *141.*

Ref.—13 T. L. J., 514.

**16.** The decree-holder-auction-purchaser applied to be put in possession of the house purchased by him in execution of a decree. The judgment-debtor objected on the ground that there was nothing to deliver, as the house had already been removed by the purchaser. The Munsiff dismissed the petition. The judgment-debtor applied for a review of the order. The Munsiff dismissed the petition stating that the order was not appealable.

*Held.*—Questions between parties or their representatives to a decree fell within the provisions of Section 238, and an appeal lay against an order passed under that Section. No fresh suit lay.— **2 S. D.,** *249.*

**17.** The 2nd defendant obtained a decree against 1st defendant and, after receiving satisfaction out of Court, fraudulently transferred it to the 3rd defendant who in execution against 1st defendant, purchased the plaint property which the 1st defendant had sold to the plaintiff before the Court sale. The suit was for possession under the private sale and cancellation of the Court sale. The question arose as to the admissibility as an admission, under Section 18 of the Indian Evidence Act, of a statement made by the 2nd defendant that the decree had been satisfied, the statement having been made after the 2nd defendant parted with his interest in the decree to the 3rd defendant.

*Held.*—The statement, though not admissible as an admission under Section 18 of the Evidence Act, was admissible as a prior statement under Section 157 to corroborate the testimony of the 2nd defendant given as a witness in the case.

The contention that the plaintiff as purchaser of the property from the 1st defendant is a legal representative of the decree-debtor and could come in only under Section 238 and not by a separate suit was not maintainable, as the whole execution proceedings were vitiated by fraud and there was no valid attachment.— **3 S. D.**, *9*.

**18.** The question was whether a succeeding Karanavan brought in as a legal representative was entitled to have the question of the validity of the decree as against the Tarwad enquired into under Section 238, when he found that the Tarwad properties had been ordered to be attached.

*Held.*—The legal representative could bring a suit, and he could also apply under Section 238. The Tarwad must have one opportunity to contest the validity of the decree against the Tarwad and that opportunity could be availed of either by a petition under Section 238 when the Tarwad property was in danger by an order in execution or by a separate suit. The fact that by adverse possession of a limited interest for 12 years, the decree-holder's right as mortgagee had become absolute against the Tarwad or the fact that the Tarwad members were unable (owing to the lapse of 12 years from the registration of the deed) to come in as plaintiffs to set aside that deed could not prevent them from contending that so far as the remedy against other properties of the Tarwad was concerned, the debt was not a debt binding on the Tarwad, and that question should be gone into on their application properly filed under Section 238.— **4 S. D.**, *258*.

**19.** Questions relating to execution between one of the parties to the decree and his own representative come within the meaning of Section 238, C. P. C., and have to be determined by the Court executing the decree. Questions, though primarily between the judgment-debtor and the auction purchaser are nevertheless questions between the judgment-debtor and the decree-holder, as the latter is liable to refund the purchase money if the sale is set aside, and is thus indirectly interested in upholding the sale.

All applications under Section 308 [= Or. XXI, r. 87] are also applications under Section 238; and similarly all applications in execution where fraud is alleged come under Secti n 238.

A court-sale impeached on the ground of fraud cannot be set aside in the absence of proof that the auction-purchaser was a party to the fraud either primarily or as having purchased with notice of decree-holder's fraud.— **1 T. L. J.**, *36*.

Fol.—10 T. L. J., 292.
Ref.—40 T. L. R., 151.
18 T. L. J., 952.

**20.** R brought a suit against V for redemption of a mortgage. On the death of the latter pending suit, R brought on record N as legal representative in the place of the deceased. As a matter of fact, K was the proper person who should have been impleaded. R obtained decree for redemption and took out execution proceedings. In a suit to set aside the decree and execution proceedings taken thereunder :

*Held.*—The decree and execution proceedings were binding on K as there was no evidence of fraud or collusion and as the wrong legal representative was made a party to the suit honestly, in ignorance of K's rights. — **28 T. L. R.**, *141* (=**1 T. L. J.**, *224*).

**21.** Disputes between joint decree-holders *inter se* do not fall within the purview of Section 238, and orders passed with reference to the rival claims of each to execute the decree without the junction of the other are, therefore, not appealable. The aggrieved party has to seek his remedy by a separate suit.— **2 T. L. J.**, *5*.

**22.** A decree for redemption of a mortgage was obtained against a Tarwad, the *de facto* manager alone being a party to the decree. The *de jure* Karanavan, who was no party to the decree, resisted the execution on the ground, *inter alia*, that the

decree obtained without making the *de jure* Karanavan a party to the suit was a nullity as against the Tarwad.

*Held.*—A decree obtained against a *de facto* manager is not a nullity as against the Tarwad owing to the mere non-joinder of the *de jure* Karanavan as a party to the suit. But if the *de jure* Karanavan disputes the validity of the debt in execution, the creditor can proceed with the execution only on proof of the validity of the debt as against the Tarwad. The *de jure* Karanavan who has been brought on record in the execution proceedings, cannot be referred to a separate suit to establish his objections, as such objections can be considered in execution under Section 238, C. P. C.—

**2 T. L. J.**, *63.*

Ref.—12 T. L. J., 264.

**23.** A decree had been passed for the recovery of property against the father of M. After the death of M's father, execution was sought against M as his legal representative. M opposed the execution, claiming that the property was in his possession, not in his father's and that he must be paid the value of improvements made on the property before the property could be recovered from him. The Munsiff overruled M's objection on the ground that he, being the legal representative of the decree-holder, was not competent to assert in execution his own rights to the property. The Munsiff's order was upheld by the District Judge.

*Held.*—When the legal representative of a judgment-debtor is brought on record in execution procedings, an objection by such representative that the property ordered to be recovered by the decree was not held by him as representative of the deceased judgment-debtor but independently of him, was one that ought to be disposed of under Section 238.— **28 T. L. R.**, *221* (= **3 T. L. J.**, *164*).

Ref.—13 T. L. J., 349.
19 T. L. J., 627.

**24.** A, the Karanavatti of a Malabar Brahmin Tarwad assigned in favour of B a decree for future mesne profits obtained by her against a stranger. C and others, junior members of A's Tarwad, brought a suit to set aside the assignment on the ground that it was unsupported by consideration. B contended, in that suit, that the matter was one which ought properly to be enquired into by the Court executing the decree and that no separate suit lay. The Court upholding B's contention dismissed C's suit. The validity of the assignment was then fought out in execution. The execution Court found that the assignment was unsupported by consideration, but upheld it on the ground that mesne profits being movable property, it was competent for A as Karanavatti to dispose of it as she liked. On appeal by C, it was contended by B that no appeal lay and that C's remedy if any was by way of a regular suit.

*Held.*—Though C's proper remedy was by way of a regular suit, he not being a party to the decree and therefore not being entitled to come under Section 238, C. P. C., yet as the assignee first successfully objected to the maintainability of the regular suit impeaching the validity of the assignment and contended that the matter was one which ought properly to be enquired into in execution, he was now estopped from contesting that the execution Court has no jurisdiction to go into the matter.

'A party who has induced a Court to act without jurisdiction, cannot be permitted when the validity of the order made for his benefit is challenged by way of appeal to take up an inconsistent position and to defeat the appeal by proof that the order was made without jurisdiction'.—

**29 T. L. R.**, *81*
(= **3 T. L. J.**, *362*).

Appl.—5 T. L. J., 128.

**25.** K and V, members of two branches of a Marumakkathayam Tarwad obtained a joint decree for redemption of a mortgage

of a common Tarwad property and, in execution of it, V obtained possession through Court. K having died before the execution of the decree, her son M applied to be impleaded as her representative, but the application was dismissed on the ground that it was out of time. P, the grandson of K who had become the Karanavan of the Tarwad, sued the defendant (the successor in title of V) for recovery of the properties, on behalf of the Tarwad, on payment of the mortgage amount. It was contended for the defence that the suit was barred by Section 238, C. P. C., and that the order dismissing the application for impleading the representative operated as *res judicata.*

*Held.*—The suit was maintainable. Such a suit may be viewed either as one by the Karanavan of a Marumakkathayam Tarwad to recover certain items of property, on behalf of the Tarwad from a junior member, who obtained possession of them in execution of a decree obtained by him against an alienee of the Tarwad, or as one by the representative of one of the joint decree-holders, for a share in the proceeds of a decree realised by a rival decree-holder.

The suit was not barred by Section 238 Clause (*b*), C, P. C., which applied only to questions arising between decree-holders and judgment-debtors and not between decree-holders *inter se* or judgment-debtors *inter se.*

An order passed in execution of a decree rejecting a petition praying for impleading the legal representative of the decree-holder was not a decree having the effect of *res judicata* in a subsequent suit.—

**32 T. L. R.**, *134.*

Ref. — 17 T. L. J., 298.

**26.** In execution of a decree obtained against A, the father in an undivided Hindu family governed by the Mithakshara Law, the judgment-debtor's ancestral properties were attached and his sons, who were impleaded as his legal repnesentatives after his death, objected to the attachment on the ground that the property attached was their ancestral property which had come to them by survivorship, that they had not taken it as his heir and that the only remedy of the creditor was to enforce his debt by a fresh suit.

*Held.*—The question raised was a question between the decree-holder and the representatives of the decree-debtor, and as such fell within the purview of Section 238, C. P. C.— **7 T. L. J.**, *450.*

**27.** The junior members of a Tarwad have no *locus standi* to claim the benefit of the provisions of Section 238, unless they are impleaded in execution as representatives of the deceased judgment-debtor.

As no property had been attached in execution of the decree, the application for setting aside the execution proceedings could not be treated as one made under Section 275 [=Or. XXI, r. 56].— **9 T. L. J.**, *56.*

Fol.—45 T. L. R., 3
(= 19 T. L. J., 120).

**28.** The appellant was the holder of a simple money decree, and the respondent was the assignee of a hypothecation decree charged on the plaint property. Both decrees were against the same defendant. The appellant who had obtained an attachment before judgment on the plaint property resisted the respondent when the latter applied for execution of his decree against the property.

The lower Court held that the appellant had no *locus standi* to resist execution of the decree. Against this order, the appeal was preferred. A preliminary objection was raised by the respondent that no appeal lay against the order as Section 238 did not apply.

*Held.*—The preliminary objection should prevail. By reason of the attachment before judgment of the property, the appellant could not be regarded as having become the representative of the judgment-debtor, so as to entitle him to resist execution of the decree, and if he could not be

regarded as such representative, he had no right of appeal, as Section 238 would not help him.

An attachment did not confer any lien in or right over the property attached in favour of the party placing the attachment. The attachment merely put the property in *custodia legis*, but did not confer any title on the decree-holder.— **9 T. L. J.,** *286.*

**29.** If property in the possession of the legal representative of a deceased judgment-debtor is attached in execution of the decree and the legal representative objects to the attachment on the ground that the property attached is his own and does not form part of the estate of the deceased, the objection is one under Section 238. The same principle applies when the legal representative claims the property as belonging to the Tarwad and not to the judgment-debtor.

The Courts have been giving the widest possible interpretation to the provisions of Section 238, in order that objections raised in execution of a decree between the parties to the decree and their representatives might be determined under that Section itself and not by a separate suit, if such remedy can be granted without unduly straining the language of the Section.—

**13 T. L. J.,** *514.*

Ref.—18 T. L. J., 485.
19 T. L. J., 627.

**30.** Where the Karanavan in his representative capacity sues or is sued on behalf of the Tarwad and a decree is made in such suit, the decree must, in the absence of invalidating circumstances and in the absence of statutory provisions to the contrary, bind the Tarwad or enure for the benefit of the Tarwad as the case may be. The junior members are consequently constructive parties to such decree and to the execution proceedings following it. Any benefit secured by the decree may be claimed and any objection to the enforceability thereof against the Tarwad may be raised, by the junior members on behalf of the Tarwad during the pendency of execution proceedings, under Section 238 C. P. C., where it appears that the Karanavan has neglected his duty or has been guilty of fraud (F. B.),—

**40 T. L. R.,** *161.*

Ref. — 40 T. L. R., 212.
18 T. L. J., 726.
Ex. & Dist. — 45 T. L. R., 8
( = 19 T. L. J., 120 ).
Dist.— 19 T. L. J., 521.

**31.** The plaintiff obtained a decree, and in execution of that decree brought to sale and purchased certain properties of the judgment-debtor. These properties were sold by him to the special appellant. Subsequently the decree-holder brought to sale and purchased in court-auction certain properties of the judgment-debtor. On his application for delivery of those properties, the special appellant objected stating that these properties had been included in the properties conveyed under the last sale sannad and the assignment. The Munsiff decided against the special appellant, and the District Judge held that no appeal lay.

*Held.*—The order of the Munsiff was one passed under Section 238 and therefore appealable.

Delivery being necessary to complete execution and the assignment in favour of the special appellant having been made before such delivery, the assignee occupied the same position as the original purchaser and is the representative of the judgment-debtor.

The dispute is therefore between the representative of the judgment-debtor and the decree-holder.

In the alternative, both the purchasers in court auction may be held to be rival representatives of a judgment-debtor, and even then the order passed falls under Section 238.— **15 T. L. J.,** *481.*

Ref.—19 T. L. J., 649.

**32.** A person who stands surety for the amount that may be eventually decreed against the defendant is a representative of the judgment-debtor within the meaning of Section 40. All questions between such a person and the decree-holder relating to the execution, discharge or satisfaction of the decree have to be dealt with under the above provision. No separate suit will lie for a declaration that the bond was void for fraud, undue influence or other vitiating grounds.— **17 T. L. J.**, *95*.

**33.** In execution of a hypothecation decree, a property belonging to the judgment-debtor was proclaimed for sale. The judgment-debtor then sold the property to the present appellant directing him to discharge the debt due to the decree-holder. The appellant deposited in Court Rs. 1,000 towards discharge of the decree-debt and got some time to deposit the balance. The balance amount not having been paid within the time allowed, the property was brought to sale and purchased by the decree-holder for Rs. 8,220. The decree-holder had already drawn Rs. 1,000 deposited by the appellant, and the balance due under the decree was Rs. 3,000 and odd. After deducting this, the decree-holder deposited in Court Rs. 5,000 and odd. Thereupon, the respondents who were two decree-creditors of the judgment-debtor, applied for rateable distribution. The appellant objected. The Court below overruled the objection and decreed rateable distribution.

*Held*.—The appellant had no *locus standi* to file the appeal. Granting for the purpose of argument that he was representative of the judgment-debtor, that did not advance his case in any way. The decree-holder was no party to the appeal. The respondents were also representatives of the judgment-debtor. Thus, the appeal was by one representative of the judgment-debtor against other representatives. Section 238 did not cover such a case. It applied only to questions between judgment-debtors or their representatives on the one side against decree-holders or their representatives on the other, and not to questions between representatives of decree-holders or judgment-debtors *inter se*. Again, the question in the case did not relate to the execution, discharge or satisfaction of the decree as required by Section 238.— **17 T. L. J.**, *298*.

**34.** A junior member of a Tarwad has no *locus standi* to intervene in execution and object to the execution of a decree obtained against the Tarwad impleading the Karanavan alone as a party defendant. His remedy is by a separate suit.

**45 T. L. R.**, *3*
(=**19 T. L. J.**, *120*).

**35.** (1) When an Anandaravan is brought in execution of a decree against the Karanavan as his legal representative, the question of the Tarwad liability for the decree-debt should be determined in execution of the decree and not by a separate suit.

(2) (*a*) Where there has been fraud or collusion or treachery on the Karanavan's part, or (*b*) when the Court was cheated into believing that the case was fairly fought or that the Tarwad was fairly represented when in point of fact it was not so, or (*c*) where the Karanavan had not defended properly the former suit because the plaint debt being a personal debt of his, he could not very well himself defend the suit on behalf of the Tarwad though there was no fraud, collusion or treachery, the Tarwad ought to be given an opportunity in a fresh suit to prove that the debt did not exist or was not binding on it, in other words, that the suit was not barred by Section 9 [new Section 10] or Section 238.

There can be no greater negligence or misconduct on the part of the Karanavan than not to appear and contest a suit in which he has very valid defences to make.— **19 T. L. R.**, *322*.

**36.** The appeal was by certain junior members of a Tarwad who intervened in execution and objected to the decree being

executed against the properties of the Tarwad. The junior members took up the position that the Karanavan was a party to the decree not as representing the Tarwad but in his individual capacity. They prayed for the attachment laid on the Tarwad properties being raised. The lower Court declared the attachment valid in regard to a portion of the decree amount.

*Held.*—No appeal lay from the order. The appellants were not parties to the decree and their application to the execution Court was in the nature of a claim petition, and hence the order was final. It was only when the decree was admitted to be for or against the Tarwad that the junior members could claim to be constructive parties to it.— **19 T. L. J.,** *521.*

**37.** The expression "representative" in Clause (*b*) of Section 238 can only relate to those impleaded after decree. Those impleaded before decree will themselves be parties to the suit.

The question whether a party is liable to be proceeded against for realising the amount due under a money decree would clearly fall within the purview of the above Clause.

The same cannot be interpreted as covering only cases relating to properties admittedly held by a representative of the party to the suit, as such. It will also cover cases where the representative sets up a right to the property independently of his character as such representative.—

**19 T. L. J.,** *627.*

**38.** See also—

Sec. 10.— **30 T. L. R.,** *224* (=**5 T. L. J.,** *134*).

„ 43.— **11 T. L. J.,** *293.*

Or. XXI, r. 56.— **6 T. L. J.,** *151.*

„ r. 92.— **20 T. L. R.,** *151.*

III. **ORDERS UNDER THE SECTION.**

**1.** An order sanctioning or refusing to sanction an assignment of a decree is final, the aggrieved party's remedy being by regular suit.— **9 T. L. R.,** *209.*

Ref.—16 T. L. R. App., 43.

**2.** When the assignment of a decree was not recognised by the execution Court, the only remedy of the assignee is a regular suit for a declaration and establishment of his rights as assignee.

In cases of assignment of decrees, whatever rights the assignor possessed, including the right to enforce execution by a regular suit, must be considered to have passed to the assignee under the deed of assignment, unless the deed embodies the reservation of any particular right to the transferor.— **14 T. L. R.,** *152.*

Ref.—16 T. L. R. App., 43.
Overruled.—22 T. L. R., 172.
Dist.—15 T. L. J., 312.

**3.** An order passed under Section 238, Clause (*c*), has all the force of a decree as defined in Section 2, and is appealable as such.— **1 S. D.,** *349.*

**4.** An order refusing adjournment or granting adjournment of execution sale will be appealable under Section 238, only if the order is passed on an application fought between the parties or their representatives. **2 S. D.,** *236.*

**5.** No appeal lies against orders admitting or refusing to admit applications by assignees of decrees for execution and such orders cannot be treated as orders under Section 238 of the Code of Civil Procedure. **16 T. L. R.,** *43.*

Fol.—16 T. L. R. A., 43.
Overruled.—22 T. L. R., 172.

**6.** In appeals from orders under Section 238, the proper Court-fee leviable on the memorandum of appeal is an *ad valorem*

fee prescribed by Clause (1), Schedule I of the Court Fees Regulation, VI of 1087.— **30 T. L. R.,** *57.*

**7.** A, after filing an appeal in the High Court against a decree of the District Court, applied to the High Court for stay of execution of the decree appealed against and obtained an order directing the lower Court to stay execution on satisfactory security being furnished by him. A subsequently applied to the District Court for the stay of the execution and tendered as security certain immovable properties. The District Judge refused to accept the security and declined to stay execution as prayed for. A appealed to the High Court against this order.

It was contended for the decree-holder-respondent, that no appeal lay against the order appealed against :

*Held.*—(1) As the question between the parties was whether the security tendered by the judgment-debtor was sufficient so as to make him entitled to claim the benefit of the order of the High Court directing the stay of the execution of the decree, the order appealed against should be treated as an order relating to the stay of execution within the meaning of Clause (*b*) of Section 238.

(2) The question between the parties was not a merely incidental question or one relating to the way in which the execution proceedings are to be conducted.—

**33 T. L. R.,** *56*
(=**7 T. L. J.,** *276*).

Ref.—18 T. L. J., 527.

**8.** The respondent sought to bring to sale the appellant's property in execution of a decree. The appellant put in application to the effect that a composition had been entered into between the creditors including the respondent on the one hand and himself on the other, and he stated in that application that to bring the composition into effect he required two months, and prayed that the sale be stopped. The Court rejected the application by the order appealed against :

*Held.*—The order under appeal was only an interlocutory order refusing time, and no appeal lay against an interlocutory order passed in execution.— **38 T. L. R.,** *236*
(=**12 T. L. J.,** *70*).

Not appl.—42 T. L. R., 277
( = 15 T. L. J., 488 ).
Fol.—43 T. L. R., 429
( = 19 T. L. J., 491 ).

**9.** An appeal is competent from an order accepting security as sufficient, as it comes under Section 40.

No distinction can be drawn between orders rejecting the security tendered as insufficient and those accepting the same as sufficient, as both sets of orders relate in essence to stay of execution within Section 40.— **18 T. L. J.,** *527.*

**10.** The order passed upon the objections by junior members not parties to the decree, to the execution thereof is not an order under Section 40, and is not, therefore, appealable.— **18 T. L. J.,** *1224.*

**11.** The appellant obtained a decree in O. S. No. 356 of 1095 and in execution brought certain properties to sale and purchased them in court auction. The respondent who had obtained a decree in O. S. No. 790 of 1090, applied in execution of his decree for sale of the same properties and he was allowed to realise from the appellant the amount he (the respondent) would have been entitled to by way of rateable distribution.

*Held.*—The order did not come under Section 40, and was not appealable. The attaching decree-holder effects the attachment not as representing the decree-holder in the other suit, but in spite of him. Obviously he cannot be the representative of the judgment-debtor in the other suit.—
**19 T. L. J.,** *780.*

12. The first defendant in a suit prayed for the cancellation of a delivery Kychit which she alleged had been fraudulently prepared to serve as evidence of delivery to the decree-holder—auction-purchaser of item 2 in the sale proclamation. Her allegation in the petition was that she and the third defendant were in exclusive possession of that property and, as prior to the alleged delivery the Court itself had ordered that delivery of the property should not be given to the auction-purchaser, the action of the Amin was in direct violation of the order of the Court itself. The Munsiff rejected her petition for cancellation. An appeal was preferred to the District Court which allowed her appeal. In special appeal, it was contended that the appeal to the District Court was not competent as the order did not fall within the purview of Section 40.

*Held*.—The order came under Section 40 and was appealable.

The grievance of the first defendant undoubtedly related to the execution of the decree and the matter arose between the parties to the suit as the decree-holder continued to be a party to that suit after he became auction-purchaser.

The complaint of the respondent might be viewed as one relating to a wrongful dispossession by the act of the Amin or to the creation of a fraudulent court record which might cause serious hardship to her. If, however, she is treated as a co-sharer entitled to joint possession of the property, her petition may be viewed as an application for restitution in respect of the interests of herself and the third defendant. That the existence of a record like the Kychit in question would place her interest in serious jeopardy cannot be denied and it is equally clear that, in purporting to make delivery of this property, the Amin had acted in contravention of the prior order of the Munsiff.

In these circumstances, it is impossible to contend that the order does not fall under Section 40.— **19 T. L. J.**, ***808.***

13. Though no appeal lies from an order under Article 164 of the Limitation Regulation as such, such an order will be appealable as it constitutes matter for inquiry and adjudication under Section 40.—
**19 T. L. J.**, *362.*

14. See also—

Sec. 2 (2)— **18 T. L. J.**, *200.*
„ 59.— **37 T. L. R.**, *305* (= **11 T. L. J.**, *343*).
Or. XXI, r. 13.— **29 T. L. R.**, *223* (=**4 T. L. J.**, *73*).
„ r. 14.— **16 T. L. R. App.**, *43.* **22 T. L. R.**, *172.* **19 T. L. J.**, *439.*
„ r. 56.— **1 S. D.**, *1.* **19 T. L. J.**, *481.*
„ r. 64.— **17 T. L. J.**, *121.* **18 T. L. J.**, *430.* **43 T. L. R.**, *429* (= **19 T. L. J.**, *491*). **19 T. L. J.**, *530.*
„ r. 69.— **26 T. L. R.**, *147.*
„ r. 80.— **17 T. L. R. App.**, *23.*
„ r. 86.— **24 T. L. R.**, *41.*
„ r. 98.— **37 T. L. R.**, *52* (= **10 T. L. J.**, *459*).
Or. XXVI, r. 14.— **16 T. L. J.**, *267.*

## IV. PLAINT TREATED AS APPLICATION.

1. The suit was for recovery of mesne profits due between the date of delivery of property under a revised decree and the date of its re-delivery under the High Court decree reversing the original decree.

*Held*.—Though the proper procedure is to apply to the execution Court under Section 233, that objection is not fatal to the suit, because the plaintiff having paid institution fees which is more than the fee for an application under Section 233, the suit may be treated as an application under the latter Section.

Where restitution is made under a reversed decree under Section 552, C. P. C., [new Section 108 (1)], reimbursement of mesne profits appropriated under the reversed decree might be ordered.— **16 T. L. R.,** ***41.***

Fol.—17 T. L. R., 82.
Ref.— 1 S. D., 86.
2 S. D., 150.
9 T. L. J., 19.

**2.** When suits were brought, instead of applications under Section 238 C. P. C., the Courts have allowed the defect to be cured by treating the plaints as applications under Section 238. But where the plaintiff is culpably careless of his interests and where there is no justifiable means of getting him out of the difficulty which he has created for himself, the defect cannot be allowed to be cured.— **1 S. D.,** ***86.***

Ref.—9 T. L. J., 19.

**3.** In execution of a decree obtained by defendant on a hypothecation of the plaint property by plaintiff's father, the property was proclaimed for sale, and plaintiff was impleaded as the legal representative of her deceased father. She, instead of objecting to the sale under Section 238, C. P. C., brought a regular suit setting up a gift of the hypothecated property.

*Held.*—Plaintiff ought to have come in under Section 238, and not by a suit.

Plaintiff may be allowed to convert her plaint into an application under Section 238.— **2 S. D.,** ***150.***

Ref.—13 T. L. J., 462.
19 T. L. J., 627.

**4.** A purchaser from a party to a suit is a 'representative' in interest of the party to the suit, under Section 238, C. P. C.

A suit brought in contravention of the provisions of Section 238 cannot be treated as an application under the Section, as it is an irregularity that cannot be cured under Section 547, C. P. C. [new Section 78].

There is a clear difference between overlooking an irregularity under Section 547 after decree, and directing a Court to try a suit brought in contravention of the express provisions of the Section.

The omission to prefer an appeal within 30 days allowed by Art. 127 of the Limitation Regulation, to the Court having jurisdiction, *i. e.*, Zillah Court is a material error, and the attempt to cure it by a separate suit is not allowable.—**2 S. D.,** ***185.***

Ref.—37 T. L. R., 52
(=10 T. L. J., 459).
13 T. L. J., 462.
19 T. L. J., 649.

[Note the change effected by the new Sub-section (2). ]

**5.** *Per Sesha Aiyar, J.*—In a case where a party, instead of applying under Section 238, C. P. C., wrongly brought a suit, the plaint can be treated as an application under Section 238, when no question of limitation arises.

*Per Palpu Pillai, J.*—Where the plaint not only prayed for setting aside the auction sale but also asked for other reliefs against defendants other than the auction purchaser and the nature of the reliefs is undoubtedly such that they can be claimed only in a regular suit, it cannot be converted into an application under Section 238, C. P. C.— **13 T. L. J.,** ***462.***

**6.** See also—

Sec. 108.— **9 T. L. J.,** ***19.***
Or. XXI, r. 87.— **3 T. L. J.,** ***74.***
**10 T. L. J.,** ***292.***

*Limit of time for execution.*

Execution barred in certain cases.

41. (1) Where an application to execute a decree, not being a decree granting an injunction has been made and granted, no subsequent application to execute the same decree shall be granted upon any fresh application presented after the expiration of twelve years from—

(*a*) the date of the decree sought to be executed, or

(*b*) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

(2) Nothing in this Section shall be deemed to preclude the Court, from ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application.

*Explanation.*—Nothing contained in Sub-section (1) shall affect the provisions of Section 7 of the Limitation Regulation.

---

**Sec. 41** [ = S. 223, Paras 3 & 4= *Sec. 48* ]

I. Section 48 of the British Indian Code runs as follows :—

" (1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years from—

(*a*) the date..................or,

(*b*) where the decree......the decree.

(2) Nothing in this Section shall be deemed—

(*a*) to preclude the Court......before the date of the application ; or

(*b*) to limit or otherwise affect the operation of Article 180 of the Second Schedule to the Indian Limitation Act, 1877."

II. Paras 3 and 4 of Section 223 in Regulation II of 1065 were the same as Paras 3 and 4 of Section 230 of the Indian Code of 1882 and were as follow :—

" Where an application to execute a decree for the payment of money or delivery of property has been made under this Section and granted, no subsequent application to execute the same decree shall be granted after the expiration of twelve years from any of the following dates (namely) :—

(*a*) the date of the decree sought to be enforced or of the decree (if any) on appeal affirming the same, or

(*b*) where the decree or any subsequent order directs any payment of money, or the delivery of any property, to be made at a certain date—the date of the default in making the payment or delivering the property in respect of which the applicant seeks to enforce the decree.

Nothing in this Section shall prevent the Court from granting an application for execution of a decree after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application."

III. The main changes made in the old Section are :

*Sub-Rule 1.*

(1) The words "not being a decree granting an injunction" have been substituted for the words "for the payment of money or delivery of property." Thus the present Section applies to all decrees except decrees granting an injunction.

(2) The words "under this Section" have been omitted.

(3) The words "upon any fresh application presented" have been added.

(4) The words "or of the decree (if any) on appeal affirming the same" in Clause (*a*) have been omitted.

(5) In Clause (*b*) The words "or at recurring periods" have been added, and the word "delivery" has been substituted for the words "delivering the property."

*Explanation.*—This is new.

III. For the first and second Paragraphs of the old Section 223, see Order XXI, Rules 8 and 19.

IV. The old Section 223 had also the following as the last Paragraph, which has been omitted :—

"Notwithstanding anything herein contained, proceedings may be taken to enforce any decree within three years after the passing of this Code, unless when the period prescribed for taking such proceedings by the law in force immediately before the passing of this Code shall have expired before the completion of the said three years."

### Case Law.

**1.** No application presented under Section 196 of the (old) Code, should be treated as disposed of until and unless all the steps which the nature of the assistance sought for in the last column requires, are exhausted, or the application is dismissed for default or otherwise.

The mere passing of an order to issue a process is not disposing of the application within the meaning of this Section. If the judgment-creditor fails to pay the process fees due in respect of any process of execution ordered to be issued within 8 days from the date of the order or within such time as the Court may specially grant, the application shall be struck off the file.—

**3 T. L. R. App.,** *51.*

[Section 196 of Regulation II of 1037 gives the particulars of the Form of application for execution of a decree.]

**2.** Where an application for transfer of a decree from one Court to another was made within the time prescribed for execution by Section 223 of the C. P. C., but by the time the latter Court was moved to execute the decree, which was done a month after the date of the application for transfer, the period allowed for execution had run out and the lower Court disallowed execution of the decrees as time-barred :

*Held.*—The application for transfer is a step in aid of execution. The application, the transfer and the application for execution made after the transfer must be considered as parts of one transaction: and therefore, the execution of the decree was not barred.— **11 T. L. R.,** *183.*

Ref.—24 T. L. R., 12.

3. An application for attachment of properties other than those included in a previous application which is still pending on the file, is not a continuation of the former proceeding, but is a fresh application falling within the provisions of Section 223. The application, in the case, was in no way one in furtherance of the previous application, there being no request in it for the aid or intervention of the Court to carry into effect or enforce the previous application. It was altogether a fresh move to seize in execution an entirely different batch of properties, and it would be extremely bad logic to hold one a continuation of the other.

A fresh application for execution three years after the introduction of the new Civil Procedure Code (Regulation II of 1085), when the decree had become barred under Para 3 of Section 223, would be absolutely barred under proviso to the said Section, unless fraud or force of the defendant is proved.

The effect of the proviso to Section 223 is to save the sudden extinction of the right of decree-holders under the old law by the introduction of a new Code. A defined period was prescribed with a view to restrict the indefinite protraction of the claims established by decrees of Court, and this period could not be extended without fresh legislation.

Section 223, Clause (4), allows an extension of the period of twelve years only when by fraud or force the decree-holder had prevented the execution of the decree at some time within twelve years *immediately* before the date of the application.

The contention on behalf of the decree-debtor that the objections of the decree-holder that he was prevented by fraud, &c., of the decree-debtor, could not be taken in the High Court, as they were not put forward when the application for attachment was made to the District Court, must be allowed (F. B.).— **12 T. L. R.**, *8*.

4. Where the minor sons of a decree-holder succeeded him before the expiry of the 12 years prescribed by Section 223, C. P. C., but the decree was sought to be executed by them only after the lapse of such period.

*Held* (following the ruling in 11 T. L. R., 11).—The provisions of the Limitation Regulation being a part of the law of procedure, govern also the provisions of the C. P. C.

Section 8 of the Limitation Regulation II of 1062 as amended by Section 6 of Regulation V of 1068, has suspended the operation of limitation as against the minors during their minority. The fact of the minors being represented by their guardian, did not deprive them of the privilege specially conferred on them by law.—
**12 T. L. R.**, *149*.

Fol.—42 T. L. R., 9
(= 14 T. L. J., 501).
43 T. L. R., 192
(= 18 T. L. J., 217).

5. The holder of a decree which was passed in Thye 1055 made an application for issue of notice and also for the arrest of the decree-debtor in 1067, which was granted. He, however, caused only a notice to be issued. A second application was made in 1069 to execute the whole decree. It was contended that the execution was barred:

*Held*,—The order on the first application being general and limited to a particular request of the decree-holder, the application falls within the language of Section 223, C. P. C.

*Semble*.—Even if the application of 1076 had been only for notice to issue, the decree sought to be executed by the application of 1069 would be barred under the proviso to Section 223 which limits the right of a party possessing a decree under the old Civil Procedure Code to enforce it, to three

years from the passing of the new Code, that is, till the last day of 1068.— **12 T. L. R.,** *175.*

**6.** A decree-holder who obtained his decree in 1053, applied for execution in 1069. The decree-debtor contended that execution was barred under Section 223. The Munsiff and the District Court in appeal held that execution was not barred.

*Held.*—Both the Courts below were wrong. As the decree-holder had twice previously applied for execution and had his applications granted, but took no further proceedings in execution, his third application, made fifteen years after the passing of the decree and more than three years after the Code was passed, could not be granted under Section 223. When an application for execution of a decree has been made under the Section and granted, no subsequent application for execution can be granted, if 12 years have elapsed from the date of the decree.— **13 T. L. R.,** *56.*

**7.** Where an application made in 1067 under the new Civil Procedure Code by a decree-holder for execution of his decree passed in 1037 under the old Civil Procedure Code, resulted in the ascertainment of value of improvements and mesne profits left to be determined by the decree at the time of its execution, and a subsequent application in 1070 for realization of mesne profits was dismissed as having been barred by the lapse of more than 12 years since the date of the decree :

*Held.*—The period of 12 years mentioned in Section 223 of the Civil Procedure Code (Regulation II of 1065) should be reckoned, in such cases, from the date of the order fixing the amount of value of improvements and profits.

The original decree was undoubtedly an old one, but it was an incomplete one and not capable of execution so as to grant to the plaintiff the whole of the reliefs claimed by him. The value of improvements payable to defendants had to be ascertained, and the aggregate amount of mesne profits payable by defendants had still to be settled. These questions, were, after proper enquiry, settled only in 1067.— **13 T. L. R.,** *104.*

**8.** The provisions of the Section fixing a period for the execution of decrees is founded upon the same considerations of public policy as the express provisions of the Limitation Regulation.— **13 T. L. R.,** *207.*

**9.** A obtained a decree against B in O. S. No. 256 of 1059. W, X, Y and Z, the judgment-creditors of A, attached the decree. W, the decree-holder in O. S. No. 61 of 1071, after having had a proclamation of sale of B's property published, presented a petition on the day fixed for sale declining to proceed with the sale. X, Y and Z, represented that, as the result of collusion and fraud between W and B, the former did not proceed with the sale and prayed the Court to conduct the sale at their instance. This prayer was granted by the Court, overruling B's plea of 12 years' limitation under Section 223 of the Civil Procedure Code.

*Held.*—The application of X, Y and Z is but a continuation of the proceedings which are admittedly commenced by W within 12 years from the time when the amount under A's decree became payable. By virtue of the attachment of the decree under Section 270, C. P. C. [=Or. XXI, r. 51], at the instance of the plaintiff's judgment-creditors, these creditors have simply assumed the position of their judgment-debtor (plaintiff). All the judgment-creditors of the plaintiff must be looked upon as one person for every one of them is entitled to carry on execution of the decree in O. S. No. 256 of 1059 *on behalf of the plaintiff.* So far as the plaintiff is concerned, there is no distinction between one attaching creditor and another. The proceedings commenced by the holder of the decree in O. S. No. 61 of 1071 within twelve years from the time when the amount of the decree in O. S. No. 256 of 1059 became payable, must be

taken to be pending till they are determined by the sale of the property attached, although the plaintiff's creditor who initiated them is different from the creditor who wishes to conclude them. It matters very little which of the creditors of the plaintiff conducts any portion of the proceedings for the execution of the decree in O. S. No. 256 of 1059. The acts of the holder of the decree in O. S. No. 61 of 1071 as well as the acts of the holders of other decrees against the plaintiff are the acts of the plaintiff who is the judgment-creditor in O. S. No. 256 of 1079. This being so, the plaintiff is entitled to rely on them to save his claim from limitation. As the defendant's property was attached within the prescribed time by the decree-holder in O. S. No. 61 of 1071 *acting on behalf of the plaintiff*, and the attachment still continues, the other decree-holders of the plaintiff are competent to carry on the sale on behalf of the plaintiff. The plaintiff's claim was not barred by 12 years' limitation.

As Section 292 C. P. C., [New Section 50] which deals with the claims of rival judgment creditors, points to the conclusion that proceedings taken by any one of the holders of a decree against the same person benefits all equally, the right of A to execute his decree against B was not barred.

Under Section 292, money realised in execution of a decree cannot be claimed exclusively by the creditor who executes the decree but must, in the absence of special equities, be distributed rateably among all the judgment-creditors who apply for execution. This discretion of law fully indicates that the creditor who actually carries on the execution, must be treated as acting on behalf of *all* the creditors who have signified their intention of claiming payment. While one creditor is actually carrying on the execution, it will not only not serve any useful purpose if the other creditors are required to carry on simultaneously the very same process but will also involve the judgment-debtor in ruinous and unnecessary loss in the shape of execution costs. This consideration seems to have mainly weighed with the Legislature in enacting Section 292. If the defendant's contention be allowed, it will defeat the benevolent object of the Legislature in enacting this Section.— **13 T. L. R.,** *211.*

**10.** The Limitation Regulation makes no provision for the exclusion of the time taken to obtain a copy of the decree from the period prescribed for the execution of decrees, which is 3 years.

*Semble.*—The Civil Procedure Code does not require a copy of the decree to be filed with the application for the execution of the decree.— **13 T. L. R.,** *154.*

**11.** A decree-holder applied for issue of warrant and attachment of property. Only the latter prayer was granted by the Court under Section 223 of the Civil Procedure Code. In due course, however, all further proceedings in connection with the attached properties were stopped. More than three years after that, the decree-holder renewed his application for arrest.

*Held.*—When the prayer for attachment was granted and that for arrest not, the natural presumption in the absence of anything to the contrary was that the latter prayer was refused and subsequent application for arrest was consequently barred by time.

Section 223 gives the Court a discretionary power to withhold the issue of a warrant. When the Court granted only one of the prayers, it cannot be assumed that it intended to pass an order on the other prayer more than three years after, even though the Judge might say that the matter was left pending.— **15 T. L. R., 9.**

Dist.—7 T. L. J., 131.
Ref.—2 S. D., 46.

**12.** X presented a substantive application in Thye 1070 for sale of certain properties attached in 1066 in execution of a decree obtained by him against Y on the 22nd Purattasi 1061. A claim was preferred and

dismissed on the 15th Ani 1070. X repeated his application for execution on the 2nd Ani 1073. Y contended that the latter application for sale having been made more than 12 years after date of decree, was barred by Section 223 of the Civil Procedure Code. The District Judge overruled this contention.

*Held.*—(1) The Judge was right as the subsequent petition of Ani 1073 was only a reminder and not a substantive application under Section 228 [ = Or. XXI, r. 9 (2) ] which is what is meant by "application" in Section 223.

(2) The three years' bar under Art. 153 of the Limitation Regulation (old) could not be reckoned from the date of attachment as no order cancelling it has been passed under Section 272, C. P. C. [ = Or. XXI, r. 53].— **13 T. L. R.,** *29.*

Fol.—3 S. D., 178
18 T. L. R., 208
5 T. L. J., 324.
33 T. L. R., 197
( = 7 T. L. J., 367).
Ref.—42 T. L. R., 362
( = 16 T. L. J., 380).
Dist.—19 T. L. J., 906.

**13.** P. obtained a decree against X. on 3-12-1066 and put in his last execution application on 2-12-1068 for impleading the legal representatives of the deceased judgment-debtors and for attachment and sale of their properties. The application contained, however, no list of the properties as required by law, and that list was put in only on 12-1-1079.

*Held.*—The application unaccompanied by the list required by law was materially defective and was no application under Section 228 [ =Or. XXI, r. 9 (2) ] and the execution became barred as the list was put in more than 12 years after date of decree.— **20 T. L. R.,** *255.*

Fol.—4 S. D., 188.
19 T. L. J., 979.
Ref.—18 T. L. J., 698.

**14.** Plaintiff obtained the decree in question against the defendant on 31-1-1066. The parties entered into an adjustment whereby the decree amount was payable in two instalments and on failure to pay the first instalment, plaintiff (decree-holder) was authorised to apply to Court to have the decree executed in full. This adjustment was filed in Court on 24-7-1078 and was merely recorded without any further order. On application for the execution of the decree on 31-11-1082, the plea of limitation bar under Section 223 of the Civil Procedure Code being raised:

*Held.*—The word 'recorded' seemed to show that no judicial order giving effect to the adjustment or compromise was made. The Legislature appears to have used the words "recorded" and "filed" in the C. P. C. These words appear to mean simply that the papers may be placed on the record.

As no judicial order was passed on the petition dated 24-7-1078, the twelve years' period of limitation prescribed by Section 223 of the Civil Procedure Code had to be computed from the date of the decree and not from the date of the adjustment petition. More than 12 years having expired from that date on 31-11-1082, the date of the application in question, execution was barred under Section 223.

However, in a prior application for execution made also more than 12 years after the date of the decree and which was allowed by the Court computing the period of limitation from the date of the adjustment petition, the contention that execution was barred under Section 223 not having been raised by the decree-debtor, he was now precluded from raising that contention.
**23 T. L. R.** *142,*
**4 S. D.,** *273.*

Fol.—17 T. L. J., 538.
Ref.—18 T. L. J., 880.

**15.** The decree-holder applied for execution of the decree in 1079 within twelve

years of the passing of the decree, but died while the subsidiary proceedings were going on. Within four months of his death his legal representative put in a petition in 1082, more than twelve years after the decree, for permission to prosecute the execution application of 1079. The Munsiff dismissed the petition on the ground that the petition which had been put in more than sixty days after the death of the decree-holder was barred, and that under Section 223, the decree could not be executed after twelve years from the date of the decree.

*Held.*—As the application was to continue proceedings which were pending, and not a fresh application for execution, Section 223 had no application and the twelve years' rule would not be a bar to continuing the execution.— **25 T. L. R.,** *134.*

Fol.—5 T. L. J., 324.
Ref.—42 T. L. R., 362
(=16 T. L. J., 330).
18 T. L. J., 792.
19 T. L. J., 524.

**16.** The right of the decree-holder to obtain execution will not be necessarily defeated, if by reason of objections on the part of the judgment-debtor or action taken by the Court or other cause for which the decree-holder is not responsible, final completion of the proceedings in execution initiated under Section 228 [ Or. XXI, r. 9 (2)] cannot be obtained within the period limited in Section 223, C. P. C.

Further applications of the decree-holder to the Court executing the decree to go on from the point, where the execution proceedings had been arrested, and complete execution of his decree, would be applications merely, ancillary to the substantive application under Section 228, and would not be barred by Section 223.— **2 S. D.,** *46.*

**17.** The decree under execution was passed on 6-10-67. The first application for execution made on 17-10-70 was granted and it was finally struck off for default on the decree-holder's part to file the necessary schedule of property, &c. The 2nd application was confined to the addition of parties only. The 3rd application dated 27-7-1079 was for issue of warrant to arrest the debtor and for delivery of property. The warrant issued was returned unexecuted and the order for delivery of property was also returned unexecuted as the decree-holder was neither present in person nor by deputy to take delivery. On 9-2-80, the 3rd application was struck off for default of prosecution. The next application was made on 10-3-80.

*Held.*—The application of Thulam 1080 was a substantive application and not a formal one to revive the former one and therefore it was barred under the 12 years' rule contained in Section 223, C. P. C.

A distinction has to be drawn between orders which amount to a judicial determination of the execution petition and those made for the sake of administrative convenience. The test in every such case is whether the Court had taken all necessary actions under the application. If the Court has taken necessary action, it cannot be said that the application was pending.— **3 S. D.,** *178.*

Fol.—6 T. L. J., 77.

**18.** Though a re-attachment after decree of the properties which have been already attached before judgment is not necessary, the decree-holder who has effected the attachment before judgment is not entitled to enforce his decree without putting in an execution petition in the prescribed form. See Sections 223 and 228 [ = Or. XXI, r. 9 (2) ].— **2 T. L. J.,** *100.*

**19.** An application for the execution of a decree passed on 3rd Makarom 1073, put in on 20th Kumbhom 1086, was rejected by the District Judge as barred. A prior application of the decree-holder, presented on 8th Edavom 1081 for recovery of mesne profits of the property that had been decreed, was granted on 7th Vrischikom 1082, which order was modified by the High Court

on appeal on 12th Makaram 1083. The decree-holder did not follow up his application of 1081 but allowed it to be struck off on 18th Dhanu 1082, and no steps whatever were taken for execution of the decree till the application of 1086 was preferred. It was contended by the decree-holder in appeal that, as the defendant opposing his application of 1081 had carried the matter to the Appellate Court, he (decree-holder) could not have executed the decree during that time, and, hence, that period should be deducted.

*Held.*—The pendency of the appeal did not in any way prevent the decree-holder from executing the decree for mesne profits as determined by the District Court. His application of 8th Edavom 1081 having been once granted, the subsequent application which was more than 12 years from the date of the decree was clearly barred under Section 223 of the Code of Civil Procedure.— **28 T. L. R.,** ***127.***

**20.** Where an application for the execution of a decree for rents and costs by attachment and sale of immovable properties, was made without specifying as required by Section 230 C. P. C., [= Or. XXI, r. 11] the names and other particulars of the properties sought to be attached, but a list containing the above particulars was put in more than 12 years after date of decree :

*Held.*—The execution of the decree was barred under the provisions of Section 223. **3 T. L. J.,** ***213.***

Fol.—19 T. L. J., 979.
Ref.—18 T. L. J., 698.
19 T. L. J., 524.

**21.** The plaintiff applied on 10th Edavom 1079 to execute a decree which he held, by proclaiming the properties charged by the decree for sale. This application was allowed, but for want of prosecution, was struck off. The plaintiff applied again on 21st Dhanu 1083 for sale of property. The application was opposed on the ground that it was barred by Section 223, C. P. C., as it was made more than 12 years after decree.

*Held.*—The second application was not really a new application, but a continuation of the former proceedings to obtain the sale of the hypothecated property. As it was only for revival and prosecution of the previous application, the Section did not apply. Section 223 is confined to fresh applications.— **5 T. L. J.,** ***324.***

Diss.—33 T. L. R., 197
(= 7 T. L. J., 367).

**22.** A hypothecation decree, dated, 2-11-1075, directed recovery of the decree amount by sale of the hypotheca and also from the person of the defendant. On 31-10-1087, the decree-holder applied for execution as against the hypotheca as also by arrest of the defendant, but prayed that process may be issued first as against the property. On this, the Court ordered proclamation to issue. The application was dismissed on 19-11-1087 as tom-tom charges were not paid. On 21-4-1088, the decree-holder again applied for execution. It was contended on behalf of the judgment-debtor that the application was barred under Section 223, C. P. C., as more than 12 years had elapsed from date of decree. The Munsiff upheld the contention and dismissed the application. The District Judge held that the second application was only a continuation of the first, and hence was not barred.

*Held* (in second appeal).—(1) The decree-holder's application for sale of the hypotheca was *granted* within the meaning of Section 223, C. P. C., when the Court ordered proclamation to issue, and it was the decree-holder's fault if he did not take the necessary steps in order to enable the Court to proceed to sale : and if the application was dismissed for default of prosecution after the prayer in the application was once granted, Section 223 was a bar to a fresh application made after 12 years of the date of decree.

(2) The order of the Court dismissing the application referred only to the prayer

for sale of the hypotheca and did not affect the prayer for the arrest of the judgment-debtor, and therefore, the application of 21-4-1088 may so far as the execution of the decree by the arrest of the judgment-debtor was concerned be treated as a continuation of the application of 31-10-1087.

"The test whether an order striking off an execution application is one made simply for the convenience of the Court, or is one substantially disposing of the application so as to make it fall within Section 223, C. P. C., is to see whether the Court had taken all the necessary action under the application."— 6 T. L. J., 77.

**23.** A decree which directs the sale of the hypothecated properties in default of payment of money is a decree for money, whether there is in it a direction to pay personally or not. In the case, the decree sought to be executed directed the amount due under hypothecation bond and costs to be recovered from the hypotheca and from the person of the judgment-debtor. The decree is a decree for money, and the provisions of Section 223 are applicable to it.

The sale of properties directed to be sold under a hypothecation decree takes place by the force of the terms of the decree itself and not by virtue of their having been impliedly or constructively attached from the date of the decree as assumed in 5 T. L. J., 324.

It is true that ordinarily an attachment of properties should precede a sale [Section 250 (=Or. XXI, r. 28)]. But it does not necessarily follow that without an attachment there could be no valid sale at all. In the case of decrees similar to the one under consideration, the sale takes place by virtue of the terms of the decree itself, and there is no scope for the provisions of the Civil Procedure Code relating to attachment to come into operation at all. The effect of an attachment is to place as it were an embargo on the properties attached and to put these properties in *custodia legis* to be subsequently availed of by the attaching creditor, but not to create a lien on them in his favour. In cases like the present, the lien on the properties created by the hypothecation deed is merged in the decree and perpetuated by it and the sale of the properties directed by the decree for the purpose of making that lien available for the decree-holder proceeds by the force of the terms of the decree itself. It has also been held that in cases where an attachment of properties is necessary before they can be brought to sale, a sale without attachment is irregular but not invalid without proof of substantial injury under Section 308, C. P. C. [ = Or. XXI, r. 87].

The hypothecation decree, dated 1-4-1077, directed recovery of the decree amount by the sale of the hypotheca and also from the person of the defendant. On 13-7-1085, that is, within twelve years from the date of the decree, the decree-holder made a substantive application for the enforcement of the decree and prayed therein for the issue of a warrant of arrest to the judgment-debtor and for proclamation and sale of the properties in the schedule to be filed by him. A warrant of arrest was issued accordingly, but was returned unexecuted on the ground that the judgment-debtor was not to be found. On 1-11-1085, the Court directed the decree-holder to produce a schedule of properties for the issue of proclamation. This order was not complied with, and the application for execution was dismissed on 9-11-1085. On 30-6-1091, the decree-holder again applied for execution by issue of notice under Section 244, C. P. C., [ = Or. XXI, r. 20 (1) ] and for the sale of the properties hypothecated. The judgment-debtor opposed the application as time-barred. The District Judge upholding the judgment-debtor's contention, dismissed the application.

*Held*,—The decree-holder's application dated 13-7-1085 for the sale of the hypotheca had been *granted* within the meaning of Section 223 of the Code, and it was due to the laches of the decree-holder himself

in not pursuing the application that it was dismissed. Therefore, the subsequent application made more than twelve years after the date of the decree was barred (F. B.).— **33 T. L. R.**, *197* (= **7 T. L. J.**, *367*).

Fol.— 37 T. L. R., 8.
17 T. L. J., 774.
18 T. L. J., 140.
Dist.—19 T. L. J., 524.
Ref.— 19 T. L. J., 906.

**24.** The assignee of a decree of the Kuzhithurai Munsiff's Court dated 5-8-1078, applied on 11-3-1090, for recognition of assignment of the decree and for transfer of the decree for execution to the Padmanabhapuram Munsiff's Court. This application was granted on 7-8-1090. On 18-8-1090, the assignee—decree-holder applied to the latter Court for attachment of property and for issue of warrant of arrest, but the application was dismissed on the ground that it was barred by the 12 years' rule. It was contended in appeal that the application dated 18-8-1090 was but a continuation of the prior one dated 11-3-1090 and that therefore it was not barred.

*Held.*—An application for recognition of the assignment of a decree and for the transfer of the decree to another Court for execution was not an application *for* execution of the decree. Even if it be so regarded, it contained no prayer as to the mode in which execution was sought, and whatever prayer there was, had been granted, and the subsequent application put in more than 12 years after the date of the decree was barred under Section 223. **33 T. L. R.**, *299*.

**25.** Evasion of process of arrest is fraud within the meaning of Section 223.

Returns of process-servers are admissible under Section 35 of the Evidence Act as evidence of facts reported by them.— **10 T. L. J.**, *140*.

Fol. —17 T. L. J., 538.
Ref.—18 T. L. J., 792.

**26.** The question for decision was whether the date of the preliminary decree or of the final decree afforded the starting point of limitation for execution of a partition decree.

*Held (Per Sesha Aiyar, J., Chatfield, J., concurring).*—In partition suits, the only decree that is effective is the final decree and for purposes of limitation time must be made to run only from the date of that decree. The steps taken after the preliminary decree in pursuance to the provisions of Section 381 [=Or. XXVI, rr. 13, 14] are only steps in the granting to the plaintiff of the relief which he has asked for and to which he was entitled in the suit and the final decree passed after the procedure of Section 381 had been followed, supplemented and completed the former decree and by necessary implication embodied in itself the terms of the original decree.— **11 T. L. J.**, *24*.

**27.** A compromise decree provided that the defendant should pay the plaintiff a certain amount by 30-1-1083 and another amount by 30-1-1084. It then provided that, if default be made in such payment, all the amounts were recoverable with 12 per cent interest from the date of the decree from the defendant and the hypothecated property. The instalments were not paid. After various unsuccessful attempts, the decree-holder on 8-1-96 applied for attachment and sale of the judgment-debtor's properties and this was resisted on the ground of limitation.

*Held.*—As regards the amount payable on 30-1-1084, execution was not barred, but as regards the other amount payable on 30-1-1083 execution was barred.

The penalty clause in the decree was intended to convey a distributive and not a collective sense and provides for consequences of default of each instalment.

"The policy of the law, especially where the moral justice of the case requires it to do so, is to listen to any fair ground on

the plaintiff's part which may take his case out of the statutes of limitation, and, conversely, to welcome the defence of the statutes, where there is a moral right in the defendant to be protected against the claim of the plaintiff; and subject to that, the statutes of limitation must have their full effect given to them.—

**13 T. L. J.**, *148*.

Ref.—18 T. L. J., 816.

**28.** Whenever an application is made by the decree-holder and the Court has so far granted it that nothing could be done by the Court until the decree-holder has done something, as for instance, until he has paid process fees, the application has in fact, been granted within the meaning of Section 223 C. P. C. If owing to the default of the decree-holder to take such necessary steps his application is ultimately dismissed, a subsequent application cannot be treated as a revival or continuation of that application.— **37 T. L. R.**, *8*.

Ref.—15 T. L. J., 1.
18 T. L. J., 792.
18 T. L. J., 816.
Fol.—17 T. L. J., 774.
19 T. L. J., 306.
Appr.—19 T. L. J., 524.

**29.** The decree was a decree for money executable at once against the person of the judgment-debtor, and after two months against the hypotheca. Assuming that Section 223 (*b*) applies, the money was directed to be paid at once though the remedy against the hypothecated property could not be immediatly availed of. So the period of two months cannot be excluded for the purpose of limitation.

Under Clause (*a*) of the Section also, the appeal is barred. "The date of the decree" mentioned in the Clause means the date the decree actually bears. The time taken for the preparation of the decree cannot be excluded.— **14 T. L. J.**, *147*.

**30.** A decree was passed on 17-2-1085. On 15-2-1093, the decree-holder applied to execute the decree by sale of the defendant's properties. The sale was held on 5-10-1093 when it was stopped by injunction issued in another suit. The injunction ceased on 12-12-1097. On the question whether the period between 5-10-1093 and 12-12-1097 can be excluded in calculating the period of limitation for other execution proceedings.

*Held*.—(1) The decree-holder having been prevented from executing the decree within the meaning of Section 15 of the Limitation Regulation, he was entitled to the exclusion of such time, as he cannot be compelled to follow any other method of execution which is possible but which may or may not prove effective.

(2) Section 15 of the Limitation Regulation controls Section 223, C. P. C. Both are general Regulations and cannot be called special law.— **14 T. L. J.**, *186*.

Ref.—42 T. L. R., 9
(=14 T. L. J., 501).
18 T. L. J., 816.

**31.** The provisions of the Limitation Regulation, being part of the law of procedure, must govern the provisions of the Civil Procedure Code.

The period of twelve years' limitation prescribed under Section 223 C. P. C., is controlled by Section 15 of the Limitation Regulation, and the period during which the execution of the decree has been stayed by injunction has to be excluded.

An objection to an application in execution on the ground of bar by limitation ought to be taken at once and if not so taken, must be considered to have been waived; and the judgment-debtor cannot be permitted to raise the plea in a subsequent application filed within time.— **42 T. L. R.**, *9* (=**14 T. L. J.**, *501*).

Dist.—42 T. L. R., 316.
Fol.—43 T. L. R., 192
(=18 T. L. J., 217).
18 T. L. J., 792.

**32.** The disposal of an execution application without notice to the applicant is not a proper disposal of the application, and can be regarded only as a direction to the execution clerk to remove the application from the pending list. A subsequent application would be only one to continue the prior application.— **15 T. L. J.,** *1.*

Fol.—17 T. L. J., 774.
18 T. L. J., 792.
Ref.—17 T. L. J., 926.
18 T. L. J., 816.
19 T. L. J., 524.

**33.** A judgment-debtor who has not objected to a previous application for execution of which he had notice though it was made after the statutory period of limitation, is estopped from raising the question of limitation upon a subsequent application.

The exception provided in Clause 4 of Section 223 [Sub-rule 2 of new Section 41] is obviously based on the principle that a person should not be allowed to take advantage of his own fraud or act of violence. The term fraud in the provision should be understood in a broad and liberal sense. Evasion of process of arrest has been held to be fraud within the meaning of Section 223.— **17 T. L. J.,** *538.*

Rel.—18 T. L. J., 880.

**34.** So long as an application for execution has not been finally disposed of, a subsequent application to the Court for taking the same steps as were prayed for in the prior application should be treated not as a fresh substantive application, but only as a continuation of the prior application. That is a principle that is well recognised and has never been questioned. It is in determining what amounts to a final disposal of an application for execution that some difficulty may be felt. As long as no order is passed dismissing or striking off the application, and thus taking it off the pending file, the application is obviously a subsisting one and cannot be said to have been disposed of. Where however, an order is passed striking off or dismissing the application, the further question arises whether the order is one properly passed as a judicial order or improperly and illegally passed so as to be capable of being treated at best only as a ministerial order for the administrative convenience of the Court and not as a judicial order affecting the legal rights of the parties. In the former case the order disposes of the application finally; in the latter case the application continues to be a pending application in spite of the order. In what circumstances can an order striking off or dismissing an execution application be deemed to be a proper judicial order, and when would it be only a ministerial order? There is a large crop of rulings on either branch of the above question. The following conclusions may be drawn from them :—(1) Where for no default of the decree-holder and without notice to him, an order dismissing or striking off his application is passed, it is only a ministerial order and does not finally dispose of the application (18 T. L. R., 208 : 7 T. L. J., 131 : 15 T. L. J., 1 : 31 Mad., 71 : 37 All., 337 : 15 T. L. J., 1 ; A. S. 131 of 1101). (2) Where an order dismissing an application is passed after notice to the party and after hearing him, it is a judicial order disposing of the application ; and (3) Where the application has been granted by the Court and is subsequently dismissed for default of the decree-holder, the order finally disposes of the application (37 T. L. R., 8 : 33 T. L. R., 197 : 1917 M. W. N., 139).

A mis-apprehension is sometimes met with that, unless there is a special order of the Court fixing a time-limit within which the process fee should be paid, the decree-holder cannot be a defaulter for whatever length of time he may have failed to pay it. But such a special order is not always necessary. If there is a general rule of law defining the period within which the payment has to be made to save the application from dismissal,

then non-payment within that period clearly constitutes default justifying the dismissal of the application. Civil Circular No. 13 of 1060 fixed that period as eight days.— **17 T. L. J.**, *774*.

**35.** A decree for recovery of a certain sum of money directed that in case the sale proceeds of items 3 to 8, 11 and 12 in the plaint schedule were found insufficient to discharge the whole of the decretal amount, items 9 and 10 were liable to be proceeded against.

*Per Venkatarama Aiyar, J.*—So far as the portion of the decree relating to items 9 and 10 was concerned, the execution against which had, been allowed to proceed only if the decretal amount or any portion of the same was found not realisable from the sale of the other items mentioned in the decree, the twelve years' period under Section 223 should be computed only from the date when the remedy against the other properties was exhausted and not from the date of the decree itself.

The expression "date of decree" occurring in Section 223 contemplates a decree which is executable on that date with reference to all its parts, and if the same is not capable of being executed as regards any of such parts, the twelve years' rule provided for under the Section could not be computed from the date of the decree itself with reference to such parts.

It is a well-recognised rule of construction that where the language of a statute in its ordinary meaning and grammatical construction would lead to a manifest contradiction of the apparent purpose of the enactment or to some inconvenience, absurdity, hardship or injustice, which could not have been intended by the Legislature, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence.

An application for the issue of a certificate to another Court for transfer of the case for execution to the file of that Court cannot be treated as one for execution such as would admit of a continuation of proceedings thereunder in the Court to which the case may be transferred.— **18 T. L. J.**, *140*.

**36.** What is prohibited by Section 223 is granting of an application for execution of a decree which is more than twelve years old, if a previous application for execution of the same decree had been made and granted. The Section is not intended to relate to the first application for execution.

The provisions of the Limitation Regulation being part of the law of procedure must govern the provisions of the Civil Procedure Code. Only by giving a restricted meaning to the word "prescribed" in Section 223, *viz.*, that it has reference only to the periods of limitation prescribed by the Schedule annexed to the Act, could it be said that Section 15 of the Limitation Regulation does not control Section 223 of the Civil Procedure Code. Where it is intended to limit the reference to the periods of limitation prescribed by the schedule annexed to the Act, the expression "prescribed by the Schedule hereto annexed", is found, as in Section 4 of the Regulation. In the absence of the additional words "by the Schedule", the expression "prescribed" does not admit of the narrow interpretation put upon it.— **43 T. L. R.**, *192* (**=18 T. L. J.**, *217*).

**37.** An application for execution praying for attachment of movables was presented on 20-3-1097 within the statutory period of twelve years. No inventory, however, was annexed to the application as required under Section 229 [=Or. XXI, r. 10], but the inventory was put in after the expiry of twelve years from the date of the decree. The question was whether the execution application was not barred.

*Held.*—The application was barred. The inventory has ordinarily to be treated as a fresh application for execution, and if so treated, is clearly barred by limitation under Section 223.

The presentation of the list cannot be treated as an application for amendment of the original application.

There is no distinction recognised by the Civil Procedure Code between movables and immovables in so far as the annexing to the execution application of a list of properties to be attached is concerned.—
**18 T. L. J.,** *698.*

**38.** The provisions of Section 223, C. P. C., are controlled by the provisions of the Limitation Regulation.

The issue of injunctions restraining execution even partially is sufficient to entitle the decree-holder, to claim exclusion of the time, under Section 15 of the Limitation Act, during which the order is in force. In such cases what has to be looked to is whether, in substance, a restriction has been imposed by any order or injunction on the decree-holder against his executing the decree in any manner he pleases, and if so, whether the same would be operative for purposes of suspension of the period of limitation.

For purposes of limitation, the decree is treated as a whole, and computations in that behalf as regards portions of the decree is not permissible except in the cases set forth in Explanation I to Article 166 of the Limitation Regulation, 1100.

If by reason of an injunction the decree-holder had abstained from applying for the execution of the decree even with respect to a portion to which the injunction did not relate, the provisions of Section 15 of the Limitation Regulation could have been invoked and exclusion of time applied for on that basis.

But the benefit of the above Section could not however be claimed when the decree-holder had himself chosen to waive that right and to apply for execution virtually ignoring the injunction order issued in the matter.

The delaying of execution by frivolous, futile and dishonest objections by the judgment-debtor is "fraud" within the meaning of Section 223, C. P. C.

The evasion of a warrant of arrest issued in execution is also a "fraud". But the mere return of such processes unexecuted on the ground of judgment-debtor not being available, does not constitute "fraud".

Application for extension of time obtained by judgment-debtor, especially when they are granted, cannot be treated as a "fraud."

Where on an execution application, the Court passed on 31-10-1095 the order "Plaintiff to apply to implead defendant's heirs. Adjourned to 8-11-1097," and struck the application off the file on the adjourned date.

*Held.*—What has to be considered is whether the order of 8-11-1097 effectively disposed of the application or was merely one passed for statistical purposes. The determination of this depends upon the intention of the Court which has to be gathered from the attendant circumstances.

Two conditions may be held to be necessary to be satisfied in making out that a subsequent application is a continuation of the antecedent one.—(1) The previous application should have been dismissed for no fault or default on the part of the decree-holder, and (2) the subsequent application must be similiar in scope and character to the previous one.

As the two above conditions are satisfied in the case, the subsequent application of 1098, is only by way of a revival of the antecedent proceedings. The disposal order of 8-11-1097 does not affect the rights of the decree-holder to bring the legal representatives of the deceased judgment-debtors within three years.— **18 T. L. J.,** *792.*

**39.** In execution of a decree, an execution application of 17-1-1097 was granted

and attachment of properties was ordered on 1-12-1097. Subsequent execution applications for sale were dismissed for default and twelve years elapsed after such dismissal.

On the question whether execution was barred under Section 223 :

*Held.*—It was not barred. The continuance of the attachment keeps alive the decree, and any further application for sale of the property is not an application for execution as defined in Section 223, but only a step-in-aid of execution which has been commenced and not duly terminated. "It would be contrary to general principle and a senseless addition to all the vexations of delay in the course of procedure to hold that when for any reason, satisfactory or not, the execution of a final decree in a suit fails or is set aside and the proceedings as regards that execution are taken off the file, the whole suit is discontinued thereby and further proceedings for the same purpose are to be considered as taken in the new suit. It can hardly be laid down as a general proposition of law that, because an execution case has been dismissed by reason of no steps having been taken by the decree-holder within a certain time limited to bring the attached property to sale, the attachment that has already been put up on it necessarily falls through. All that can be said of such an order is that the decree-holder not having taken any steps within the time limited for the purpose of bringing to sale the property which had been attached, nothing further could then be done and the execution therefore must discontinue. But it could never have been intended that all that had been done antecedent to the order in question by way of attachment for the purpose of bringing the property to sale must be taken to have fallen through, and the decree-holder should begin again as if in a fresh case." (33 Cal., 666).

The difficulty cannot arise under the Code of 1100, as the dismissal of the execution application would put an end to the attachment also except in cases where the attachment is ordered to continue.—

19 T. L. J., 906.

**40.** Until a pending execution application has been finally disposed of, it cannot be maintained that any application that may be made to the Court for the better or more convenient carrying out of the steps prayed for in that petition should be treated as a fresh substantive application. No doubt, if the subsequent application prays for execution in a manner not prayed for in the prior application, to that extent it will be a fresh application to which the provisions of Section 223 would apply. Where a pending petition prayed for the execution of the decree by sale of the property, the petition is not exhausted till the Court has done all that has been prayed for in it. The Court is bound to do all that is necessary to effectively satisfy the prayer. If the prayer was for the sale of the properties, it would impliedly include the prayer for all the steps preceding the sale that are prescribed by the Civil Procedure Code. It cannot reasonably be maintained that every step in the process of execution of the decree against the property of the judgment-debtor should be specified in the execution petition and that otherwise the Court need not take such steps. If, therefore, in the pending petition there had been a proper and effective prayer for sale, a subsequent application for attachment of the properties as a preliminary to the sale cannot be treated as a substantive fresh application to which Section 223 will apply.

If the list of properties is put into Court only after the expiry of 12 years, the mere fact that an execution petition containing a prayer for attachment had been filed within 12 years of the decree will not save execution against the properties from the bar of Section 223.

An application by a legal representative would be a proper application in execution for purposes of the limitation law, though

*Transferees and legal representatives.*

Transferee.

42. Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

---

he may not then have been brought on the record in the decree-holder's place.—
**19 T. L. J.**, *979.*

**41.** See also—

Sec. 2 (2).— **18 T. L. J.**, *200.*
Or. XXI, r. 22.—**17 T. L. J.**, *926.*

**Sec. 42** [ = S. 226 = *S. 49* ]

"Section 226 corresponds to Section 233 of the British Indian Civil Procedure Code, Act X of 1877 (also Section 233 of the 1882 Code). This Section did not find a place in Act VIII of 1859. Prior to 1877, there was statutory provision made only with regard to 'application by whom to be made if decree be transferred from original decree-holder to another person' and 'cross decrees.' * * It will thus be clear that the Act of 1859 contained no statutory provisions restricting the rights of any decree-holder by any equity that may exist between himself and the judgment-debtor. Such a restriction was introduced for the first time by Section 233 of Act X of 1877."—
**4 T. L. J.**, *7.*

**Case Law.**

P. K. obtained a decree for money and assigned it to P. P. The latter, in execution of the decree, placed four items of immovable property under attachment. He then assigned the decree to A. A., who sought to bring the attached properties to sale. The heir of the deceased judgment-debtor contended, ***inter alia***, that the first assignee, who was a nephew of the judgment-debtor, had agreed not to take out execution against two out of four items attached, and that A. A., the second assignee, who merely stood in the shoes of the first assignee, was bound by such agreement.

*Held.*—Section 226 C. P. C. applied only to the equities arising between the *original* decree-holder and the judgment-debtor, and that it did not apply to such as arise between the assignee of the decree-holder and the judgment-debtor.

The English law recognised two kinds of estates—(*a*) legal and (*b*) equitable estate. The English Common law, as it originally stood, declined to recognise several kinds of equitable estates. It was through the aid of the Courts of chancery and the Legislature that transfers of equitable estates came to be recognised, though sparingly at first, but more liberally later on. At common law, "the assignee of a judgment was not regarded as invested with legal title, and therefore, was not competent to sue in his own name." But this rule has now been modified. The English law on the subject is: "Though the assignee takes subject to equities available against the assignor, he is only thereby made liable to equities against the original assignor, not to those available against the intermediate assignor, so that where a liability (such as a set-off) only attaches to the intermediate assignor, the ultimate assignee can maintain his action freed from the equity."

The meaning of the word "every" imports the existence of more than one in a particular class. The term "every transferee" therefore will apply to the successive transferees of the plaintiff—judgment-debtor. Under Section 2, the term "decree-holder" applies not only to the plaintiff—judgment-creditor, but also his transferees. 'The assignee of a judgment takes it subject to all

43. (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

Legal representative.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

---

equities, defences and agreements subsisting between the original parties, whether he had notice of them or not, acquiring in this respect no stronger rights than his assignor possessed.' Therefore, an assignee—decree-holder, or in other words, the transferee of a decree, holds the same subject to the equities (if any) which the judgment-debtor might have enforced against the plaintiff, judgment-creditor, and not as against any intermediate assignee—decree-holder, and the term "original decree-holder" in the Section is meant to refer only to the plaintiff, judgment-creditor, and no other.—
**4 T. L. J.**, *7.*

Sec. 43 [ = Sec. 227 = *S. 50* ]

I. **1.** Section 227 of Regulation II of 1065 was as follows:—"227. If a judgment-debtor dies before the decree has been fully *executed*, the holder of the decree......representative of the deceased.

Such representative shall be liable only to the extent...compel the said representative to produce such accounts as it thinks fit".

**2.** The above Section was the same as Section 234 of the Indian Code of 1882.

II. In Sub-section (1), the word "satisfied" was substituted for the word "executed" to remove a conflict of decisions.

### Case Law.

**1.** A, defendant, died during the pendency of a suit, and on plaintiff's application B was joined as party in A's place. After decree, plaintiff discovered that B was not A's legal representative and applied to the Court to join C (appellant) as such representative. The Court granted the permission under Section 227, C. P. C.

*Held.*—Section 227 provides only for representation, in execution, of judgment-debtors who die after decree; and if plaintiff by mistake or oversight failed to obtain a decree against the right party, the mistake cannot be cured in execution.

None of the persons against whom plaintiff obtained the decree died since the date of the decree, and the original first defendant was not a judgment-debtor, *i. e.*, a person against whom a decree is passed. The original first defendant died long before the debt became a judgment-debt.—
**9 T. L. R.**, *136.*

**2.** The question having been referred to a Full Bench whether a suit would lie to set aside an order passed in execution proceedings making the representatives of a deceased judgment-debtor liable to a decree passed against the debtor personally, on the ground that the representatives were in possession of assets belonging to the estate of the deceased:

*Held.*—An order passed in an enquiry held under Section 227 of the Civil Procedure Code falls under Clause (*b*) of Section 238, [new Section 40] and thus is a decree under Section 2 of the Code; and therefore the suit is not maintainable.

The only course open to the plaintiffs was to appeal against the order. Not having done so, the order must stand and a regular suit could not be instituted to have it cancelled.

Section 227 prescribes the procedure to be adopted on the death of a judgment-debtor, but does not provide for any order to be passed under it.— **11 T. L. R.,** *4.*

**3.** Though a son under the Hindu Law is bound to pay his father's just debts from any property he may possess, yet when he is made a party to the decree as representative of his deceased father for purposes of execution, his liability is limited to the extent of assets which may have come to his hands and not duly disposed of.

To ascertain the assets of the deceased, the Court may hold an enquiry.

The purchaser as against whom also fraud is alleged is not and cannot be made a party to the execution proceedings [Section 238 (new Section 40)], and the question of fraud or fraudulent preference is, therefore, a matter which the plaintiff should agitate in a regular suit, if he is disposed and advised to pursue the property in execution of his own decree.— **14 T. L. R.,** *198.*

**4.** The permission of the Court is not necessary to file an execution petition against whomsoever the decree-holder alleges to be the judgment-debtor's representative.— **23 T. L. R.,** *214.*

**5.** Section 227 is the Section under which the legal representative of a deceased defendant after decree can be brought on to the record and the Section does not authorise any application by the representative himself but only authorises the decree-holder to make such application. All that is necessary to be done under this Section by the decree-holder is to apply to execute the decree against the legal representative, and if such an application is filed by the Court and any action taken thereon, such as ordering notice to the legal representative so as to entitle the legal representative to appear and contest the application, the legal representative must be deemed to be duly brought on to the record irrespective of the final order on the decree-holder's application.

The term "decree-holder" in Section 227 must be taken to include his assigns and representatives; for this Section comes after Section 225 [= Or. XXI, r. 14] which deals with the transfer of a decree by assignment or operation of law (F. B.).— **23 T. L. R.,** *219.*

**6.** Where the son of a Mithakshara father is proceeded against as his legal representative in execution of a decree passed against the father and is in possession of the ancestral estate, it lies upon him to account for such property and failure to do so entails personal liability on him to the extent of the property in respect of which he is bound to account.

"The judgment-debtor had only to account up to the full value of the assets he received as legal representative. It is for the decree-holder in the first instance to prove that some assets came to the legal representative, and the *onus* is then shifted on the latter to show how the assets were applied. Once it is admitted or proved that the legal representative sought to be made liable has come into possession of assets belonging to the estate of the deceased, it is for him to satisfy the Court as to the extent of the assets received and to account for them.

Where a person is proceeded against as representative of a deceased judgment-debtor, and it is proved that property of the deceased judgment-debtor has come

*Procedure in execution.*

Powers of Court to enforce execution.

44. Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—

(*a*) by delivery of any property specifically decreed;

(*b*) by attachment and sale or by sale without attachment of any property;

(*c*) by arrest and detention in prison;

(*d*) by appointing a receiver; or

(*e*) in such other manner as the nature of the relief granted may require.

---

into his hands, it lies upon the person against whom execution is sought, to account for all the property of the deceased judgment-debtor which has come into his hands.

The appellant having failed to satisfy the Court that he had duly applied the property of the deceased, was personally liable to the extent of the property in respect of which he had failed so to satisfy the Court. **35 T. L. R.,** *35.*

7. An *ex parte* judgment-debtor died and his legal representative objected to the execution of the decree on the ground that the judgment-debtor was not aware of the decree, and that it was fraudulently obtained.

*Held.*—The contention relating as it did to the validity of the decree and not being one relating to the execution, discharge or satisfaction of the decree could not be gone into in execution proceedings under Section 238. Such a question could only be tried in a regular suit brought for the purpose, as an application in execution assumes the validity of the decree sought to be executed.— **11 T. L. J.,** *293.*

Ref.—19 T. L. J., 822.

8. A decree for recovery of immovable property with arrears of rent and costs was passed against three individuals. The second plaintiff—special respondent—applied for execution of the decree. The 13th defendant—special appellant—who claimed the property covered by the decree under two sale deeds executed by the heirs of the 2nd defendant after the passing of the decree, resisted execution. It was contended for the 13th defendant—special appellant—that he was the legal representative of the deceased 2nd defendant within the meaning of Section 227 of the Civil Procedure Code, and that as he (the 13th defendant—special appellant) was not impleaded in the execution application but was only brought in as a party after the lapse of six years from the 2nd plaintiff's attaining majority, the execution of the decree was barred.

*Held.*—The 13th defendant—special appellant—could not be considered to be the legal representative of the deceased 2nd defendant within the meaning of Section 227. The wording of Section 227, which provided for the execution of a decree against a judgment-debtor's legal representative when the judgment-debtor had died before the decree had been fully executed, showed clearly that the person who claimed to be such legal representative should at least be one against whom the whole of the decree could be executed.

45. (1) Where a decree is passed against a party as the lega representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

Enforcement of decree against legal representative.

(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.

---

It was quite clear that at any rate so far as the costs awarded by it was concerned, the decree under consideration was not capable of execution as against the 13th defendant. Moreover, the 13th defendant's sales were affected by *lis pendens*, and 2nd plaintiff—special appellant—was entitled under Section 260 of the Civil Procedure Code [ = Or. XXI, r. 38 (1)] to execute the decree by removing the 13th defendant from the property.— **12 T. L. J.**, *316*.

**9.** See also –

Or. XXI, r. 20.—
**38 T. L. R.**, *318*
( = **12 T. L. J.**, *314*).

**Sec. 44** [ = „ = *S. 51*]

In regard to Section 51 of the British Indian Code, the Indian Special Committee said :—" This Clause states generally the powers of the Court in regard to execution leaving the details to be determined by Rules. It will be observed that the power to direct immediate execution is no longer restricted to one class of suits but that it is now general in terms. Any limitation that may be found necessary will be imposed by Rules."

**Sec. 45** [ = S. 248 = *S. 52*]

I. In Sub-section (2), the words "in respect of which he has failed so to satisfy the Court" have been substituted for the words "not duly applied by him" in the corresponding second Para of Section 248 of the old Regulation.

**Case Law.**

**1.** The suit was on a bond executed by a deceased Hindu Makkathayee against his sons as legal representatives. The District Judge gave a decree personally against the defendants.

*Held.*—The suit being against the defendants as the legal representatives of their father, the proper procedure to be followed was that provided in Section 248, C. P. C.

The plaintiff need not have been called upon before obtaining decree to prove what assets came into defendants' hands, since the decree would simply have been for money to be recovered from the assets of the deceased. The decree should mention that it should be executed as directed by Section 248.

The rule of law governing cases of this kind is that defendants cannot be held liable for anything more than the assets of their father clearly proved to have passed into

Partition of estate or separation of share.

46. Where the decree is for the partition of an undivided estate assessed to the payment of revenue to Our Government or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Division Peishkar or any gazetted subordinate of the Division Peishkar deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates.

---

their possession and not duly disposed of by them.— **16 T. L. R.,** ***81.***

Fol.—31 T. L. R., 250.

**2.** The plaintiff and the defendants carried on a partnership business in 1075 and 1076. The plaintiff, defendants Nos. 4 and 6 and 12th defendant brought suits, O. S. Nos. 1, 2 and 3 of 1080 respectively for the taking of accounts of the partnership business and for their share of the profits. O. S. Nos. 2 and 3 of 1080 brought by defendants, Nos. 4 and 6 and 12th defendant respectively, abated finally owing to their failure to bring on the record within the time allowed by law, the legal representatives of some of the partners who died during the course of those suits. The plaintiff contended that, as the defendants Nos. 4, 6 and 12 allowed the suits brought by them to abate, the profit and loss should be divided between the remaining partners. The District Judge overruled the plaintiff's contention and decreed the suit allotting shares to defendants Nos. 4, 6 and 12 also. On appeal by defendants Nos. 23 to 27, who are the legal representatives of defendants Nos. 1 and 2, it was urged, *inter alia,* that the lower Court was wrong in giving a personal decree against the representatives of defendants Nos. 1 and 2, and that no decree could be given in favour of defendants Nos. 4 and 6 as they had allowed the suit brought by them for their share of the profits in the said concern to abate.

*Held.*—(1) The lower Court was wrong in giving a personal decree against the legal representatives of defendants Nos. 1 and 2.

(2) The abatement of the suit under Section 355, C. P. C., [ = Or. XXII, r. 9 ] had no other effect than that of preventing the then plaintiffs or those claiming under them from suing again on the same cause of action. The Section does not lay down that the title of the said plaintiff or those claiming under him is extinguished by such abatement, or that in any suit brought not by, but against, him, the said plaintiff cannot defend his position or rights by relying on his true title.

A partnership suit is a suit of a peculiar character and the parties to such suits do not stand to each other precisely in the same relation as parties to suits generally. Each of the parties to a partnership suit, however he may be formally ranked, is really in turn plaintiff and defendant, and in both capacities comes before the Court for the adjudication of his rights relatively to the other partners, which the Court endeavours to determine by its decree. (F. B.).— **31 T. L. R.,** ***250.***

**3.** There is no justification for holding that "property" as used in Section 45 should be necessarily land. The equity of redemption in the hands of the representative is property within the meaning of the Section. **18 T. L. J.,** ***76.***

**4.** See also—

Sec. 48.—**14 T. L. R.,** ***198.***

**35 T. L. R.,** ***85.***

*Arrest and Detention.*

Arrest and detention.

47. (1) A judgment-debtor may be arrested in execution o a decree at any hour and on any day, and shal as soon as practicable, be brought before th Court, and his detention may be in the civil prison of the district i which the Court ordering the detention is situate, or, where such civi prison does not afford suitable accommodation, in any other plac which Our Government may appoint for the detention of person ordered by the Court of such district to be detained :

Provided, firstly, that, for the purpose of making an arres under this Section, no dwelling-house shall be entered after sunse and before sunrise:

Provided, secondly, that no outer door of a dwelling-hous shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorised to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found:

Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgment-debtor, the officer authorised to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw, and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest:

---

**Sec. 46** [ = S. 262 = *S. 54* ]

Section 262 of Regulation II of 1065 was as follows :—

"262. *Partition of estate or separation of share.*—If the decree be for the partition or for the separate possession of a share of an undivided estate paying revenue to Government, the partition of the estate or the separation of the share shall be made by the Division Peishkar and according to the law, if any, for the time being in force for the partition or the separate possession of shares, of such estates."

**Case Law.**

Section 209 of the Civil Procedure Code (Regulation II of 1087) does not apply to ordinary lands paying revenue to Government. The word "Estate" which occurs in this Section refers to estates like Edappalli, Punnatu, &c. Except in the case of the latter, the Civil Courts have no power to call upon the Revenue Officers to partition lands in execution of decrees. (C. Cir. No. 20 of 1061).— 4 T. L. R. App., *29*.

[Section 209 referred to was as follows:— "209. If the decree be for the division of an estate or for the separate possession of a share of an undivided estate paying revenue to Government, the division of the estate or the separation of the share shall be made by the Revenue Officer under the orders of the Dewan according to the rules and customs of the country".]

Provided, fourthly, that, where the decree in execution of which a judgment-debtor is arrested is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) Our Government may, by Notification in Our Government Gazette, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by Our Government in this behalf.

(3) Where a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court may inform him that he may apply to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force.

(4) Where a judgment-debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Court, that he will within one month so apply, and that he will appear, when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the Court shall release him from arrest, and, if he fails so to apply and to appear, the Court may either direct the security to be realised or commit him to the civil prison in execution of the decree.

(5) Where the judgment-debtor applies for time to enable him to pay the judgment-debt, the Court may leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

---

**Sec. 47** [ = S. 325 = *S. 55* ]

I. *Sub-sec. (1)—2nd Proviso*—Under the old Regulation, no outer door of a dwelling-house should be broken open. This prohibition has been removed and any outer-door of a dwelling-house may now be broken open to effect the arrest of a judgment-debtor in execution of a decree, provided that the dwelling-house is in the occupancy of the judgment-debtor and he refuses or prevents access thereto.

The Indian Select Committee of 1909 observed:—"It has been strongly urged in several quarters, more particularly by the Government of the Punjab, that the prohibition against the forcing of an outer-door

is an 'inconvenient superstition'. We are of opinion that a warrant of arrest issued by a Court of Justice should receive implicit obedience; and the distinction between warrants, according as they have been issued by Criminal or Civil Courts, seems to be an importation even now foreign to the ideas of the people of this country. We think it both fair and necessary that an order of authority, if resisted, should be carried out by force, and, where the householder objects to having his door broken, he has only to hand over the judgment-debtor or to allow the arresting officer to satisfy himself that the judgment-debtor is not on the premises.– *India Gazette dated 21-3-1903, Pt. V.*

The Indian Special Committee said:—"The object of this Proviso is to prevent vexatious forms of resistance to execution which constantly obstruct decree-holders in the execution of their decrees." See also under Section 54 *Infra.*

*3rd Proviso.*—The words "and who according to the customs of the country does not appear in public" occur after the word "judgment-debtor" both in Section 55 of the present Indian Code and in Section 336 of the Code of 1882. These words were omitted in Section 325 of Regulation II of 1065. For reasons, see Section 54 *Infra.* In the draft Bill of the present Regulation, the above words were put in; but the Select Committee deleted them.

II. *Sub-sec. (2).*– The Indian Special Committee said:—"This Sub-clause is intended to cover the cases of certain persons or classes whose summary arrest might, as in the case of railway servants, be attended with danger or inconvenience to the public."

III. *Sub-secs. (3) and (4).*—Though Section 336 of the Indian Code of 1882 contained the provisions embodied in these Rules, they were not adopted when Regulation II of 1065 was enacted. It was then observed:—"The portion of Section 336 of the Code which makes it obligatory on Courts to advise judgment-debtors to seek discharge on ground of insolvency, is omitted as the provisions of Chapter XX (On Insolvent judgment-debtors) being quite unsuited to the circumstances of this country are not re-enacted in the Bill."—
*S. O & R., Para 51.*

These two Sub-sections ran as follow in the present Indian Code, as enacted in 1908:-
"(3) Where a judgment-debtor......before the Court, the Court *shall* inform him...... and that he *will* be discharged......being in force."

"(4) Where a judgment-debtor expresses his intention......he was arrested, the Court *shall* release him......in execution of the decree."

An Amending Act III of 1921 has substituted the word "may" for "will" in Sub-section (3) and "may" for "shall" in Sub-section (4).

IV. *Sub-sec. (5).*—The British Indian Code does not contain this Sub-Rule. It was added by the Select Committee who pointed out that the amendment only restored the existing provision on the subject. See *Infra.*

V. 1. Section 325 of Regulation II of 1065 corresponding to this Rule was as follows:—

"325. *Place of judgment-debtor's imprisonment.*—A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall as soon as practicable be brought before the Court, and his imprisonment may be in the Civil jail of the District in which the Court ordering the imprisonment is situate, or, when such jail does not afford suitable accommodation, in any other place which the Government may appoint for the confinement of persons ordered by the Courts of such District to be imprisoned:

Provided as follows:—

(*a*) for the purpose of making an arrest under this Section, no dwelling-house shall be entered after sun-set or before sun-rise

and no outer door of a dwelling-house shall be broken open. But, when the officer authorised to make the arrest has duly gained access to any dwelling house. he may unfasten and open the door of any room in which he has reason to believe the judgment-debtor is to be found; provided that, if the room be in the actual occupancy of an woman who is not the judgment-debtor, the officer shall give notice to her that she is at liberty to withdraw; and, after allowing a reasonable time for her to withdraw and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of making the arrest:

(b) when the decree in execution of which a judgment-debtor is arrested is a decree for money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

The Court may release from custody any judgment-debtor arrested under this Section if it is satisfied that the further detention of such judgment-debtor will seriously affect his health, on such terms and conditions as it may deem proper. If the Court orders the release on security being furnished, such security may be realized in the manner provided by Section 249.

If the judgment-debtor applies for time to enable him to pay the judgment-debt, the Court may grant him time for a period not exceeding fifteen days. If he furnishes sufficient security that he will appear at the expiration of fifteen days, the Court may release him. If no security be given or accepted, the judgment-debtor may, at his expense, be left in the custody of a peon.

In the case of a surety, such security may be realized in the manner provided by Section 249."

[ Old Section 249 referred to is new Section 109. ]

**2.** The corresponding Section 336 of the Indian Code of 1882 did not contain the two Paras immediately following Clause (b) in the above Section. In inserting these Paras, it was observed: —"Provisions authorising the temporary release of a judgment-debtor who is dangerously ill or who is trying to raise money to satisfy the decree being desiderata, amendments are made in Sections 325 and 231 so as to legalize the temporary release of the judgment-debtors under the circumstances stated."—

*S. O & R., Para 51.*

See Section 51 *Infra.*

VI. "The whole law of arrest of debtors arose out of the ancient vindictive views as to the debtors, the person having to be placed as a slave at the disposal of the creditor till the debt is discharged by service. Even under the humane Hindu law, if the debtor was of the same class or a lower class than the creditor, the debtor is bound to work for the creditor till the debt is discharged. SirHenry Maine speaks of the extraordinary and uniform severity of very ancient systems of law to debtors and the extravagant powers which they lodge with the creditors".— **K. P.,** *455.*

### Case Law.

**1.** It is clear from the language of Section 325, Proviso (b), that the Court has jurisdiction to require security for the decree amount from the appellant as a condition precedent to his release. The further question whether such security could be one for the decree amount, is only one as regards the sufficiency of the security. That is a question of judicial discretion and not jurisdiction.

Having regard to the place which Section 325, Proviso (b), Clause (2), occupies in the Code and its object which appears to be to give interim protection to sick persons who are arrested in execution of decrees, all that the decree-holder can insist on in ordinary cases is that the judgment-debtor should be restored to custody when the circumstances which necessitated his release have ceased to exist. This right of the decree-holder

would be sufficiently secured in such cases by demanding such security as would be sufficient to secure the personal appearance of the judgment-debtor in Court whenever that is required. To hold otherwise would practically amount to a denial of protection in those very cases in which it is most needed, and would defeat the humane object which the Legislature had in view in enacting this provision.— **15 T. L. J.**, *355*.

**2.** The accused was standing on mohsul under orders of the Munsiff's Court, Padmanabhapuram. At that time, 15 days' mohsul had expired and with the consent of the decree-holder, the period had been extended by the Court. The accused escaped from such mohsul custody, and was ordered to be prosecuted by the Munsiff, and was convicted by the Second Class Magistrate under Section 224 T. P. C. and Section 589 Civil Procedure Code. On appeal, the Additional District Magistrate acquitted the accused, as he held that there could be no legal custody of a judgment-debtor after 15 days' mohsul had expired.

*Held* (Upholding the order of acquittal).- The detention of a judgment-debtor in the custody of an Officer of the Court cannot extend beyond the period of fifteen days.

Section 325, C. P. C., provides for the detention of a judgment-debtor in the custody of an Officer of the Court. But reading the penultimate paragraph of Sub-section to that Section as a whole, it is seen that such detention cannot extend beyond the period of 15 days. The main object of the Legislature in enacting the provisions contained in that paragraph is to enable a judgment-debtor to gain time for paying up the decree-debt. It is specially laid down that 15 days' time for this purpose may be granted by the Court. The procedure following this permission is that the judgment-debtor may be released if he furnishes security to appear after fifteen days or that, if he furnishes no security, he may be left in the custody of a peon, the costs of such detention being borne by him. To construe the latter pro vision as authorising an indefinite prolongation of the custody would be to introduce the words "at a time" at the end of the first sentence in the paragraph (F. B.).—
**41 T. L. R.**, *309*
(=**16 T. L. J.**, *110*)

**3.** The decree-holder applied for attachment of immovable property belonging to third defendant and also took steps for arresting first defendant in execution of the decree. First defendant applied and obtained an order that steps for arrest should be taken only after proceedings against the immovable property of third defendant terminated. The order was passed without notice to the decree-holder. The latter applied for review of the order, and the Court admitted the review and cancelled the order. First defendant appealed. It was contended for appellant that he could not be arrested in execution, as he was exempted from personal appearance under Section 98 and that the lower Court should have exercised the discretion vested in it under Order XXI, Rule 19.

*Held.*—The scope and purpose of Section 98 do not embrace the arrest of a judgment-debtor in execution of a decree. The appearance referred to in the Section is appearance as a party or a witness in the course of a suit or other proceeding. The provision of the Code relating to the arrest of judgment-debtors is Section 47. It specially provides for the exemption of certain persons and classes of persons from arrest in execution. Therefore, exemption from arrest in execution can be obtained by a judgment-debtor only if he comes within any of the exemptions provided in Section 47 and not on the ground that he is exempted from personal appearance in Court under Section 98.

The object of the provision in Order XXI, Rule 19, is to protect a judgment-debtor being unnecessarily harassed by simultaneous proceedings against person and property. It does not apply to a case where

48. Notwithstanding anything in this Part, the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money.

Prohibition of arrest or detention of women in execution of decree for money.

49. Our Government may fix scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

Subsistence allowance.

---

the property proceeded against belongs to one judgment-debtor and the personal process is directed against another.

In a matter left to the discretion of the lower Court, the High Court will not interfere unless there are strong grounds to show that the exercise of the discretion has been so unreasonable as to deserve being characterised as perverse.—

**17 T. L. J.**, *455*.

**4.** Till the order of adjudication, the right of the decree-holder to proceed against the person and properties of the judgment-debtor is not affected; and a judgment-debtor arrested in execution of a decree is not entitled to be released from custody by the Appellate Court before adjudication, by the mere fact that he has filed an insolvency petition.

Even if an application to the Insolvency Court by a judgment-debtor to be released from custody, be construed as one for an injunction, the release of the appellant could not be considered to fall under one of the two classes of cases contemplated in Rule 1 of Order XXXVII, C P. C., being neither a case of a property being in danger of being wasted, damaged, alienated or wrongfully sold in execution nor one of the defendant threatening or intending to remove or dispose of the same. The restraint prayed for could relate only to any act of the party which alone an injunction can prohibit.

The powers of the Insolvency Court are circumscribed by the provisions of the Insolvency Regulation, and Section 47, Clause (3), of the Civil Procedure Code, does not confer any jurisdiction for the release of judgment-debtors in the Insolvency Court.—

**18 T. L. J.**, *530*.

---

**Sec. 48** [ = S. 240 = *S. 56*]

Though there is no express protection for minors from arrest under the Civil Procedure Code, it is necessarily implied.

As the Criminal law declines to hold a minor below the age of seven responsible for his actions, it will be anomalous if there be nothing to prevent that same child being retrospectively made liable when he became *sui juris* for a civil liability.

*Per T. Sadasiva Iyer, C. J.*—I think that having regard to the implications in some of the provisions of the Civil Procedure Code and the changed spirit of modern Codes, minors and lunatics and idiots were never intended to be made personally liable in civil proceedings instituted through their next friends, except when the Court in very special cases brought by or against minors, orders the minors to be personally liable either unconditionally and immediately or after they attain majority and fail to fulfil certain conditions.— **K. P.**, *455*.

---

**Sec. 49** [ = S. 328 = *S. 57* ]

See Order XXI, Rule 37.

---

Detention and release.

**50.** (1) Every person detained in the civil prison in execution of a decree shall be so detained,—

(*a*) where the decree is for the payment of a sum of money exceeding fifty rupees, for a period of six months ; and,

(*b*) in any other case for a period of six weeks :

Provided that he shall be released from such detention before the expiration of the said period of six months or six weeks, as the case may be,—

(i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or

(ii) on the decree against him being otherwise fully satisfied, or

(iii) on the request of the person, on whose application he has been so detained, or

(iv) on the omission by the person, on whose application he has been so detained, to pay subsistence allowance :

Provided, also, that he shall not be released from such detention under Clause (ii) or Clause (iii), without the order of the Court.

(2) A judgment-debtor released from detention under this Section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison.

---

**Sec. 50** [ = Ss. 331 & 332 = *S.* 58].

I. 1. The corresponding Sections of Regulation II of 1065 are given below :—

" 331. *Release of judgment-debtor.*—The judgment-debtor shall be discharged from jail,

(*a*) on the amount mentioned in the warrant of committal being paid to the officer in charge of the jail ; or

(*b*) on the decree being otherwise fully statisfied ; or

(*c*) at the request of the person on whose application he has been imprisoned ; or

(*d*) on such person omitting to pay the allowance as hereinbefore directed ; or

(*e*) if the judgment-debtor has placed all his property at the disposal of the Court as hereinafter provided ; or

(*f*) when the term of his imprisonment, as limited by Section 332, is fulfilled ; or

(*g*) when it is certified by competent medical authority that the judgment-debtor

is in a bad state of health and the Court considers that his further detention is highly inexpedient :

Provided that, in the second, third, fifth and seventh cases mentioned in this Section, the judgment-debtor shall not be discharged without the order of the Court.

A judgment-debtor discharged under this Section is not thereby discharged from his debt; but he cannot be re-arrested under the decree in execution of which he was imprisoned."

"332. *Imprisonment not to exceed six months*: *When not to exceed six weeks.*—No person shall be imprisoned in execution of a decree for a longer period than six months ;

or for a longer period than six weeks if the decree be for the payment of a sum of money not exceeding fifty rupees."

**2.** Section 341 of the Indian Code of 1882 did not contain Clause (*g*) found in Section 331. For the object of its insertion, see Note under Section 47 *Supra*. See under Section 51 for similar provision.

II. For Form of Order for the release of a person imprisoned in execution of a decree, see Appendix E, Form No. 15.

### Case Law.

**1.** A civil debtor committed to jail is entitled to immediate release on payment of the amount of the decree in execution of which the commitment was made. The Officer in charge of the jail is competent to receive payment of the judgment-debt and set the debtor free. He need not wait for the special orders of the Court under whose warrant the debtor was committed to custody. The amount received must be remitted to the Court as early as practicable. The warrant of commitment shall be returned to the Court with the fact of payment endorsed therein (C. Cir. No. 13 of 1061).—

**4 T. L. R. App., *24*.**

**2.** A judgment-debtor was arrested and brought before the Court ; but the plaintiff not being present to pay batta, he was released. This was irregular, as plaintiff had no notice of the arrest. On a fresh application, the Munsiff refused to grant a fresh warrant on the ground that a judgment-debtor once discharged could not be re-arrested.

*Held.*—A judgment-debtor is liable to be re-arrested when under the first order he has not been actually imprisoned.

**7 T. L. R. App., *49*.**

**3.** A decree was passed in a Small Cause suit for a sum which was less than Rs. 50 on date of decree. In execution of the decree, the judgment-debtor was arrested, and on the day he was committed to jail, the sum due under the decree including interest after decree and execution costs, was more than Rs. 50. The maximum period of imprisonment is only six weeks under Section 332, C. P. C., if the decree is "for the payment of a sum of money not exceeding fifty rupees." On reference by the Small Cause Court:

*Held.*—The period of imprisonment under Section 332 is determined according to the amount due under the decree on the date on which the judgment-debtor is sent to prison; and such amount is calculated by taking into account the amount due under the terms of the decree and execution costs, if any, allowed by the Court.—

**27 T. L. R., *152***
**(= 2 T. L. J., *367*).**

**4.** A judgment-debtor was arrested and imprisoned in Civil jail in execution of a decree and during the course of his incarceration he put in a petition praying to be released and consenting to be re-arrested and sent back to jail in case he failed to discharge the decree-debt within a certain time. As the decree-holder agreed to the debtor's petition being granted, the latter was released from jail. Subsequently the judgment-debtor having failed to discharge the debt within the specified time, the decree-holder applied for warrant to arrest the debtor.

*Held*.—The judgment-debtor so released could not be re-arrested.

The rule that a judgment-debtor taken in execution and released at the instance of the creditor cannot be re-taken for the same debt is derived from the common law and was introduced into the Indian Civil Procedure by Section 278 of the Act of 1859. The provision in the Regulation is based on Section 541 of the 1882 Act. Under the common law, a debtor in custody who agrees with the creditor to pay the debt within a date if released and on default to be reincarcerated and being so released does not pay up the debt, cannot be re-arrested. In spite of agreement by the debtor to be re-incarcerated, he cannot be so re-incarcerated, if in fact he was previously released out of custody with the consent of the creditor. A debtor released at the request of the creditor cannot be re-arrested for the same debt. An agreement in violation of this provision cannot be recognised.

As the Court would not have released the decree-debtor but for the consent of the decree-holder, the release was at the request of the latter within the meaning of Clause (*c*) of Section 331, and therefore, the judgment-debtor was not liable to be re-arrested.

**30 T. L. R.**, *228* (=**5 T. L. J.**, *23*).

**5.** Where a judgment-debtor once arrested and put in the Civil jail in execution of a decree had been discharged by the District Judge in his capacity as Superintendent of the Civil jail behind the back of the judgment-creditor, on a medical certificate, on the ground that the judgment-debtor's detention in jail would be detrimental to his life, he could be re-arrested in execution of the same decree.

Section 331, relied upon by the appellant, had no application, because the order of discharge contemplated by, and referred to, in Clause (*g*) thereof is a judicial order passed by the *Court* under whose warrant the judgment-debtor had been put in jail or its appellate authorities. There was no such order in the case.— **35 T. L. R.**, *219*.

**6.** (1) The provisions of Section 331 are not illustrative but exhaustive and the Section cannot be interpreted to mean that a judgment-debtor released from jail under any circumstances whatever could not be re-arrested in execution of same decree.

The Section necessarily implies that the re-arrest of the judgment-debtor under other circumstances is not illegal. The grounds of discharge are the satisfaction of the decree either by payment of decree-amount, or otherwise, the expiry of the term of imprisonment, the inexpediency of keeping him in jail owing to ill-health, the surrender by the judgment-debtor of all his properties under the provisions of Chapter XX (relating to insolvent judgment-debtors), the consent of the decree-holder for the release of the debtor or his neglect to pay the subsistence allowance. In two of the above cases the justification for the detention has been removed, and in one the full term has been served out. In two the release is based on the consent, or is the result of the neglect of duty, on the part of the decree-holder. In the remaining two cases the release is due either to the fact that the judgment-debtor has availed himself of the protection given by the Legislature to insolvent judgment-debtors or to the inexpediency of keeping a sick man in the Civil jail to the risk of his life. In all the above cases there is sufficient justification for the release of the judgment-debtor. In grounds (*a*) and (*b*) mentioned in the Section, a re-arrest is out of the question as the decree has been satisfied. In the remaining cases, the Legislature thought it expedient not to harrass the debtor by a re-arrest in execution of the same decree. From this it does not follow that the Legislature meant that a judgment-debtor once arrested and released could not be re-arrested under any circumstances in execution of the same decree. At any

Release on ground of illness.

51. (1) At any time after a warrant for the arrest of a judgment-debtor has been issued, the Court may cancel it on the ground of his serious illness.

(2) Where a judgment-debtor has been arrested, the Court may release him if, in its opinion, he is not in a fit state of health to be detained in the civil prison.

(3) Where a judgment-debtor has been committed to the civil prison, he may be released therefrom—

(*a*) by Our Government, on the ground of the existence of any infectious or contagious disease, or

(*b*) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness:

(4) A judgment-debtor released under this Section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that prescribed by Section 50.

---

rate if that was the intention of the Legislature, the intention should have been expressed in clear and appropriate language.

(2) The Section enumerates in express words in what cases a judgment-debtor once released from jail should not be re-arrested under the decree in execution of which he was imprisoned. Application of the rule against re-arrest to cases other than those stated in the Section would be opposed to the intention of the Legislature. Reason and justice do not require further extension of the rule. The argument that, in the absence of an express provision—that except in the cases mentioned in Section 331, a judgment-debtor discharged from prison may be re-arrested—the rule against re-arrest should be understood as one of an absolute character and that the cases enumerated in the Section should be taken only as illustrative, ignores the rights conferred by law on the decree-holder. Arrest and imprisonment of the judgment-debtor up to a specified period is one of the remedies open to a decree-holder under other provisions of the Code. Express provision of law is necessary for destroying such right and not for re-affirming it. A judgment-debtor discharged from prison is liable to be re-arrested in execution of the same decree except in the cases specified in Clause (*a*) to (*g*) of Section 331.—

**43 T. L. R.,** ***326***
**(=18 T. L. J., *5*).**

**Sec. 51** [ = Ss. 325 & 331 = *S. 59* ]

I, The Notes on Clauses said :—"This is new, but the reason for its enactment is obvious."

II. This Section does not seem to be altogether new. It embodies provisions similar to those contained in Clause (*g*) of Section 331 and the second paragraph of Clause (*b*) of Section 325 of the old Regulation. For these Clauses, see under Sections 50 and 47 *Supra*.

**Case Law.**

See Sec. 47.—**15 T. L. J.,** ***355.***
" Sec. 50.—**35 T. L. R.,** ***219.***

*Attachment.*

Property liable to attachment and sale in execution of decree.

52. (1) The following property is liable to attachment and sale in execution of a decree, namely, lands houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf :

Provided that the following particulars shall not be liable to such attachment or sale, namely :—

(*a*) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornament as, in accordance with religious usage, cannot be parted with by any woman ;

(*b*) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following Section;

(*c*) houses and other buildings (with the materials and the sites thereof) belonging to an agriculturist and occupied by him ;

(*d*) books of account ;

(*e*) a mere right to sue for damages ;

(*f*) any right of personal service ;

(*g*) stipends and gratuities allowed to pensioners of Our Government, and political pensions ;

(*h*) allowances (being less than salary) of any public officer or of any servant of a local authority while absent from duty ;

(*i*) the salary or allowances equal to salary of any such public officer or servant as is referred to in Clause (*h*), while on duty, to the extent of—

(i) the whole of the salary, where the salary does not exceed fourteen rupees monthly;

(ii) fourteen rupees monthly, where the salary exceeds fourteen rupees and does not exceed twenty-eight rupees monthly; and

(iii) one moiety of the salary in any other case;

(*j*) the pay and allowances of persons to whom the Native Articles of War apply;

(*k*) the wages of labourers and domestic servants whether payable in money or in kind;

(*l*) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(*m*) a right to future maintenance; and

(*n*) where the judgment-debtor is a person liable for the payment of land revenue, any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

*Explanation.*—The particulars mentioned in Clauses (*g*), (*h*), (*i*) (*j*) and (*k*) are exempt from attachment or sale whether before or after they are actually payable.

(2) Nothing in this Section shall be deemed to exempt houses and other buildings (with the materials and the sites thereof) from attachment or sale in execution of decrees for rent of any such house, building, or site.

---

Sec. 52 [= S. 263 = *S. 60*]

I. The corresponding Section of Regulation II of 1065 was as follows:—

"263. *Property liable to attachment and sale in execution of decree.*—The following property is liable to attachment and sale in execution of a decree (namely), lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in the capital or joint-stock of any railway, banking or other public Company or Corporation, and except as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which or the profits of which he has a disposing power which

he may exercise for his own benefit, and whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf :

Provided that the following particulars shall not be liable to such attachment or sale (namely) :—

(*a*) the necessary wearing apparel and bedding of the judgment-debtor, his wife and children ;

(*b*) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such ;

(*c*) the materials of houses and other buildings belonging to and occupied by agriculturists ;

(*d*) books of account ;

(*e*) mere rights to sue for damages ;

(*f*) any right of personal service ;

(*g*) stipends and gratuities allowed to military and civil pensioners of Government, and political pensions ;

(*h*) the salary of a public officer to the extent of—

(i) the whole of the salary where the salary does not exceed ten rupees monthly ;

(ii) ten rupees monthly where the salary exceeds ten rupees and does not exceed twenty rupees monthly ; and

(iii) one moiety of the salary in any other case ;

(*i*) the pay and allowances of persons to whom the Native Articles of War apply ;

(*j*) the wages of labourers and domestic servants ;

(*k*) an expectancy of succession by survivorship or other merely contingent or possible right or interest ;

(*l*) a right to future maintenance.

*Explanation* —The particulars mentioned in Clauses (*g*), (*h*), (*i*) and (*j*) are exempt from attachment or sale whether before or after they are actually payable :

Provided also that nothing in this Section shall be deemed to exempt the materials of houses and other buildings from attachment or sale in execution of decree for rent."

II. In regard to the changes introduced by the new Sections 52 and 53, the Notes on Clauses say :—

"Provisions economically beneficial to agriculturists are introduced, so as to guarantee to such agriculturists, as, in the opinion of the Government, stand in need of protection, that they shall be enabled to cultivate their holdings without any break. These provisions cannot but prove generally beneficent in view of serious, and by no means temporary, problems relating to production of foodstuffs."

III. *Sub-Sec. (1), Proviso.*—1. *Clause (a).*—"The exemption of cooking vessels will, it is believed, surely give effect to a practice already more or less accepted between litigants in many parts of the country. Personal ornaments have already been held to be exempt, if forming part of a wife's *Stri dhanam*, from attachment in execution of a decree against a husband, even though the Hindu law concedes him a personal right of user, but doubts attach to a report exempting the necessary ornaments of a Hindu woman as forming part of her wearing apparel." (Statement of Objects and Reasons, 1901 Amending Bill).—

*India Gazette dated 21-12-1901, Pt. V.*

2. *Clause (c).*—The British Indian Rule has the words "and the land immediately appurtenant thereto and necessary for their enjoyment" after the words "the sites thereof". The Indian Select Committee of 1903 observed:—"We have somewhat enlarged the wording, though not the principle, of the exemption relating to houses and buildings of agriculturists. The exemption is of little efficacy if the site and the land immediately appurtenant and necessary for

enjoyment are liable at any moment to attachment and sale".—*India Gazette, dated 21-3-1903, Pt. V.*

The original Bill (Travancore) had the above words, but the Select Committee deleted them.

3. *Clause (h).*—"It has been held that the expression 'salary' in Clause (*h*) includes half-pay allowances during absence on sick-leave, and it is thought that, as a matter of public policy, the whole of these should be exempted from attachment." (Statement of Objects and Reasons, 1901 amending Bill).—*India Gazette dated 21-12-1901, Pt. V.*

4. *Clause (i)* (i).—The original Bill fixed the minimum salary at twenty Rupees, as in the British Indian Code. The Select Committee considered the sum of fourteen rupees as adequate and substituted that figure.

It may be noted here that the Indian Code has been amended by Act XXVI of 1923 which has substituted "forty" for "twenty".

5. *Clause (i)* (ii) —The original Bill adopted the figures of the Indian Code, namely, "twenty rupees" and "forty rupees". The Select Committee reduced them to "fourteen rupees" and "twenty-eight rupees" respectively.

Act XXVI of 1923 has amended this Sub-clause also of the Indian Code by substituting "eighty" for "forty" in the latter part of the Sub-clause.

6. In the Indian Code, the following Proviso has been added to Clause (*i*) by Act XX of 1925:—"Provided that where the decree holder is a society registered or deemed to be registered under the co-operative societies Act, 1912, and the judgment-debtor is a member of the society, the provisions of Sub-clauses (i) and (ii) shall be construed as if the word 'twenty' were substituted for the word 'forty' wherever it occurs and the word 'forty' for the word 'eighty'."

IV. *Sub-sec.* (2).—The original Bill had, as in the Indian Code, the words "and the lands immediately appurtenant thereto and necessary for their enjoyment" after the words "sites thereof", and the words "or land" after the word "site" at the end. The Select Committee deleted them.

### Case Law.

1. *Held* (by a majority).—Where an Amin of the Court wrongfully attaches property not belonging to the debtor, he has no right to hold it as against the true owner, and the latter's removal thereof does not constitute theft, there being no dishonest intention in so doing.

*Per Krishnaswamy Rao, C. J.*—The Civil Procedure Code distinctly confines attachment and sale to the rights, title and interest of the *judgment-debtor* in the property. Even the Court cannot order attachment of the property of one who is not the judgment-debtor. The Code provides a procedure for investigation of claims to attached property if preferred. But it does not sanction wrongful attachment. "A sheriff or his officer seizing goods under a writ of execution, is responsible in damages if he takes the goods of the wrong person. If he takes the goods of a stranger, though the plaintiff assures him they are the defendant's goods, he is trespasser; for, he is obliged, at his peril, to take notice whose the goods are."

The office of an attachment is to make *specific* the general lien which the creditor has upon the property of the debtor. Where the relationship of creditor and debtor does not exist between the person at whose instance the property is attached, and the person whose property is attached, the attachment does not create a lien. In the absence of a lien, the Amin has no right to hold the property against the owners.

*Per Kunhiraman Nair, J.*—The Amin was entitled to hold the property attached by him even as against the real owners who could not get it back without the consent of the Court to which the Amin is attached

and not until the owners establish their claim to the satisfaction of that Court or of some other competent Court in the mode prescribed by law. The Amins are bound to attach the specific property indicated in the inventory annexed to the warrant of attachment and are, by law, responsible for the safe custody of movables attached by actual seizure. They are personally liable for loss of such property whilst in their possession and are liable in damages for breach of the duty imposed upon them by Regulations and Rules. No Amin could be permitted to defend an action against him for loss of attached property by alleging that he, of his own accord, handed the property over to the person whom he considered the rightful owner or that the party claiming to be the rightful owner took it away from him. The system of procedure prescribed by the Regulation does not vest much discretion in the Amins, and there can be little doubt, under the circumstances, that the removal by a third party of property attached and kept by the Amin in his possession and custody is calculated to cause wrongful loss to the Amin. The attachment creates a lien on the property in favour of the Amin for expenses properly incurred in its upkeep or safe custody and to remove the property from his possession without his consent or permission of the Court may deprive the Amin of his lien and cause wrongful loss to him.— **4 T. L. R.**, *86*.

**2.** An equity of redemption is liable to attachment under a money decree.—

**5 T. L. R.**, *6*.

**3.** (1) A decree of Court is no doubt property that can be attached under Section 189 of the old Civil Procedure Code and it (the decree) falls under the description of "other property" in that Section. The mode of attachment depends upon the nature of the decree sought to be attached: if it is a simple decree for money, the attachment should be made under Sections 221 and 223 (of the old Code). The provisions of these Sections should be strictly complied with to make the attachment complete and legally valid: and if it is a decree for either immovable property, or for money charged on specific immovable property, the attachment should be made according to the provisions of Section 219.

(2) Without a proper attachment according to the provisions of the Civil Procedure Code, there can be no valid sale. It has been held that a regularly perfected attachment is an essential preliminary to sales in execution of simple decrees for money, and where there has been no such attachment, any sale that may have taken place is not simply voidable but *de facto* void.—

**6 T. L. R.**, *81*.

[The Sections of Regulation II of 1037 referred to correspond—Section 189 to Sec. 263, Sec. 219 to Sec. 271, Sec. 221 to Secs. 269 and 270, Sec. 223 to Sec. 265 of Regulation II of 1065.]

Ex.—20 T. L. R., 165.
20 T. L. R., 235.

**4.** Compensation awarded to a complainant in a Criminal case is liable to attachment in execution of a decree of a Civil Court. If the amount had been attached in the manner laid down in the Civil Procedure Code, the Civil Court has simply to ask the Magistrate in whose custody the amount is, to remit the same to it for payment to the attaching creditor. The sale of such property is open to objection.—

**6 T. L. R. App.**, *9*.

**5.** The interests of a junior member of a Marumakkathayom family when its Karanavan *de jure* and *de facto* is alive, are not legally fit objects of sale, and are incapable of being separated or defined from those of others—an inchoate and imperfect right incapable of being defined. The sale of that right is therefore the sale of an empty title. Such a thing can harm nobody.—

**7 T. L. R.**, *137*.

6. Jenmom rights are liable to be sold in execution of decrees like any other species of property (F. B.).— **8 T. L. R.**, *6.*

7. Where A and B, as the reversionary heirs of C, sued to set aside an attachment of property made by D in execution of a decree, on the ground that the decree-debt was not real, and the Zillah Judge ordered the release of the property from attachment:

*Held.*—As C possessed a life interest in the attached property, it was capable of attachment and sale; and therefore, the release of the property from attachment was wrong.

*Semble*: In execution of a decree it is the right, title and interest of the judgment-debtor that is sold. What is the extent of the right, title and interest, can be decided only in a suit between the auction purchaser and those who assert that the sale conveyed only a limited interest.

**13 T. L. R.**, *181.*

Fol.—3 S. D., 158.

8. Rent due to a widow out of land allotted for maintenance and let out by her to a tenant is not exempt under Clause *l* of Section 263 of the Civil Procedure Code from attachment for a decree debt.

There is a clear distinction between the general right to maintenance, and the rent due from property given for maintenance. In the case, it was not the former that was attached or even the property given for maintenance, but only a certain sum which was in fact a debt due to her from the tenant which she might or might not apply for her maintenance.— **17 T. L. R. App.**, *4.*

Ref.—39 T. L. R., 291.
3 S. D., 158.

9. The Karanavan of a Marumakkathayam Tarwad has, in his individual capacity, no such interest in Tarwad properties set apart by a family compact for his maintenance as could be legally attached and sold for his personal debts.

Under the family karar, he was to enjoy only the usufruct of the lands in lieu of his claim for maintenance, and he was incompetent to alienate the lands though he was given the option of raising money on the security of a small portion of the land in case of dire necessity.— **19 T. L. R.**, *165.*

Fol.—2 T. L. J., 51.
Ref.—8 T. L. J., 1.
39 T. L. R., 291.
42 T. L. R., 406
( = 16 T. L. J., 488 ).
3 S. D., 158.

10. A pension allowed by Government to a retired officer is exempt from liability to attachment, as a pension certificate cannot be transferred and the power to transfer is the test of liability to attachment.

A "stipend" is a settled pay or compensation for services, whether daily, monthly or annual. A pension is a stipend according to the ordinary acceptation of the term.

**20 T. L. R.**, *31.*

Ref.—3 S. D., 158.
11 T. L. J., 366.

11. The property allotted to Karanavan for maintenance in a family compact with an express provision against alienation is not liable to attachment for a personal decree for money obtained against him.

The power to transfer is the test of liability to attachment under Section 263.—

**3 S. D.**, *158.*

12. The security-deposit of an employee in the Sri Padam Palace could be attached subject to the lien of the said Palace.—

**K. P.**, *368.*

13. An attachment cannot confer any independent lien in or right over the property in favour of the attaching creditor.

Attachment confers no lien or interest in favour of the creditor, but merely puts the property in *custodia legis*, available to the decree-holder for realization of his amount in execution proceedings duly taken.

The attaching creditor does not acquire any charge over the property except in the restricted sense that he has a right to proceed in execution against it if no other creditors came forward, and his attachment would prevent the attached interest lapsing by survivorship at his judgment-debtor's death if such interest was an interest held jointly with others.— **K. P.**, *584*.

Ref.—26 T. L. R., 83
(= 1 T. L. J., 284).
33 T. L. R., 197
(= 7 T. L. J., 367).
Rel.—9 T. L. J., 286.
36 T. L. R., 56.
43 T. L. R., 42
(= 16 T. L. J., 510).

**14.** The plaintiff obtained a decree against first defendant and attached certain property, which, on a date anterior to the attachment, had been sold by first defendant and others to defendants 5 and 6. Defendants 5 and 6 preferred a claim and the attachment was consequently raised. Plaintiff sued for a declaration that the sale was a sham and the property was liable to be sold in execution of his decree. It was found that a portion of the purchase-money remained unpaid to the vendors, *viz.*, first defendant and others, and plaintiff was held entitled to execute the decree against the property to the extent of such right. It was contended in second appeal that the vendor's lien for unpaid purchase money was a personal right and was not liable to attachment.

*Held.*—Under Section 263, C. P. C., all properties, whether movable or immovable, except those specially exempted thereby, were liable to be attached and sold, and consequently, a debt due to the judgment-debtor was liable to be attached and sold. The vendor's lien for unpaid purchase-money was a debt with the additional right of proceeding against the property sold, and was therefore liable to attachment and sale in execution of decrees. The lien is not a mere personal right.—**27 T. L. R.**, *102*
(**= 2 T. L. J.**, *288*).

**15.** An attachment of future rent is illegal. Mere attachment may not confer title, and the property under attachment is in the custody of the Court; but after all the Court is only a mere stake-holder, and the right to the property attached is governed by the decree under execution.—
**4 T. L. J.**, *109*.

Fol.—15 T. L. J., 324.

**16.** In execution of a decree, the decree-holder attached a monthly payment allotted to the judgment-debtor for maintenance under an Udampadi executed by him and the other members of his Tarwad. The judgment-debtor contended that this monthly payment is not attachable. The execution Court upheld the defence. The District Judge held against the defence. On appeal to the High Court:

*Held.*—This monthly payment could not be attached. The judgment-debtor was originally entitled to maintenance from the Tarwad properties. For this maintenance he was entitled to a charge on the Tarwad properties. This right to maintenance does not lose its character as such merely because it has been fixed at a definite sum and secured under a deed.—
**32 T. L. R.**, *270*
(**=7 T. L. J.**, *42*).

Ref.—8 T. L. J., 1.

**17.** The effect of an attachment is to place, as it were, an embargo on the properties attached and to put those properties in *custodia legis* to be subsequently availed of by the attaching creditor, but not to create a lien on them in his favour (F. B.)—
**33 T. L. R.**, *197*
(**=7 T. L. J.**, *367*).

**18.** Kandukrishi lands cannot be taken in execution as the holders of these lands are mere tenants-at-will and have no saleable interest in the property.—

**7 T. L. J.**, *24.*

Disappr.—43 T. L. R., 466
(= 17 T. L. J., 879).
Ref.—19 T. L. J., 113.

**19.** (1) The statutory prohibition contained in Section 263, Clause (*l*), of the Civil Procedure Code is restricted in its scope to the attachment and sale of a right to future maintenance. It does not extend to the attachment and sale of arrears of maintenance which have already become payable.

(2) In order to be capable of attachment, there must be in existence at the date when the attachment becomes operative, something which the law recognises as a debt, and not merely something which may or may not become a debt; as soon as the debt has arisen it may be attached, even though it may not be immediately payable. The right to future maintenance, though merged in, and enforceable in execution of, a decree is not something which the law recognises as a debt, but is merely something which may or may not become a debt, having regard to the statutory provision exempting it from attachment.

A decree for maintenance is a right to future maintenance.

The principle underlying the prohibition contained in the Clause appears to be the policy of the Legislature which recognises the necessity of a debtor to keep his body and soul together, as far more important than the right of a creditor to recover the debt due to him.

The statutory prohibition against the attachment and sale of a right to future maintenance applies also to the judgment-debt into which such right has become transformed.— **8 T. L. J.**, *1.*

Fol.—19 T. L. J., 851.

**20.** An attaching creditor has the right to redeem a prior mortgage. He has the right to apply for execution of the attached decree—Section 270 [= Or. XXI, r. 51]. He acquires such an interest in the subject-matter of the attachment as would entitle him to be made a party to the appeal preferred against the decree attached—Sections 356 and 551 [= Or. XXII, r. 10 (1) and new Section 85 (3) and Or. XXII, r. 11]. He acquires a right to have the whole of the attached property applied in satisfaction of his debt *if no other creditors come forward*, and in any case to have a rateable proportion so applied—a right which, if violated (for example by removal of the attached property from the *custodia legis*) will entitle the creditor to claim damages.—

**36 T. L. R.**, *56.*

**21.** A widowed mother and daughters forming a joint Hindu family effected a partition, and the partition deed provided that the widowed mother should have the usufructuary interest during her life-time in certain immovable properties over which she was to have no power of disposal in any manner. In execution of a money decree obtained against the widow, these properties were attached.

*Held*,—The attachment was not maintainable. The rights and interests which have been made over to a Hindu widow by the family to which she belongs in lieu of maintenance are outside the category of properties which could be attached and sold in execution of a decree.

Having regard to the proviso in the deed against alienation, the usufructuary interest which the mother took under the deed was one which was personal and over which she had no power of disposal, and consequently it could not be attached and sold in execution of a money decree.—

**11 T. L. J.**, *366.*

**22.** The word "labourers" as used in Clause (*j*) of Section 263 should be construed in its ordinary sense. The fact that, for

purposes of the Public Works Department, certain persons are considered as "day labourers" is no reason for departing from the ordinary meaning of the word "labourer" and for understanding it in a technical sense. The pay of a Maistry of the Public Works Department is not exempt from attachment.

The words "Public Officer" which has been defined in the Civil Procedure Code and embraces every Officer in the service or pay of Government or remunerated by fees or commission for the performance of any public duty, covers the case of a Maistry of the Department of Public Works.— **38 T. L. R.,** *23* (= **11 T. L. J.,** *501*).

**23.** There is nothing in the definition of "property" in the Insolvency Regulation which compels Courts to hold that the Tarwad property is the property of the Karanavan or the junior member who has been adjudged an insolvent.

Even though Section 263, C. P. C., employs similar phraseology, the judgment-creditor who enforces his decree against the Tarwad of the Karanavan, seeks to execute the decree not personally against the man named as the judgment-debtor, but against the Tarwad which is made liable for the debt. It is not the Karanavan's right, title and interest in his individual capacity that the decree-holder proceeds against and brings to sale. He claims to attach and sell the Tarwad's right, title and interest in the property.— **40 T. L. R.,** *212* (= **14 T. L. J.,** *341*).

Ref.—18 T. L. J., 100.

**24.** Future rents and profits that may become due to a debtor are not attachable in execution of a decree against him. Such attachment is illegal and the plaintiff who bases his claim on the sale following that attachment must fail.— **15 T. L. J.,** *324*.

**25.** On reference by a Division Bench, a full Bench held,—

*Per Raman Tampi & Jacob, JJ.*—Where property allotted for maintenance to a member or members of a Nayar Tarwad is improperly alienated and possession thereof is transferred to the alienee, any other member of the Tarwad is entitled on behalf of the Tarwad to recover possession of such property during the life-time of the allottee or allottees (*i. e.*, during the continuance of the maintenance agreement) subject to the condition that the alienee is to be compensated for the improvement, if any, effected by him in the property.

*Per Varghese J.*—No general rule can be applied for all cases and the nature of the interest taken by the allottee depends on the terms of the family Karar under which the allotment is made.— **42 T. L. R.,** *406* (= **16 T. L. J.,** *488*.)

**26.** A vesting order under Section 16 of the Insolvency Regulation can be passed with respect to an interest in Kandukrishi holding.

The provisions of Section 7-A [new Section 8] cannot be treated as a statutory prohibition against the right over Kandukrishi lands being saleable in execution of decrees.

The expression "saleable" occurring in Section 263 has not received judicial construction in Travancore. In British Indian High Courts, the expression "saleable interest" has been taken to refer to interest which could be sold at a compulsory sale, as in execution of a decree, and not denoting interest that could be transferred by means of a private alienation. A general prohibition against private alienations could not bar involuntary alienations such as sales in execution of decrees. This view is in consonance with the rule that provisions of the kind, which virtually deprive litigants of their rights to enforce their claims against the properties of their debtors, and are

Partial exemption of agricultural produce.

53. Our Government may, by general or special order published in Our Government Gazette, declare that such portion of agricultural produce, or of any class of agricultural produce as may appear to Our Government to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgment-debtor and his family, shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree.

---

therefore of an ex-proprietory nature, have to be construed strictly; and could not therefore be made operative to cases not specifically enumerated therein. Execution proceedings cannot be treated as suits under Section 7-A. As such the insistence of sanction for suits with respect to Kandukrishi lands cannot be extended to execution proceedings relating to them.— **43 T. L. R.**, *466* (=**17 T. L. J.**, *879*).

**27.** The policy of the Law is that anything belonging to a debtor which is valuable in the sense that he can obtain money by selling it should be liable to satisfy the demands of the creditor whether by attachment or through the working of the Insolvency Laws, unless for reasons of public policy, the Legislature has expressly decreed otherwise. In the case of Kandukrishi lands there is no express prohibition in the Civil Procedure Code against their being taken in execution. No such rights are referred in Section 52.

The rights of an insolvent over Kandukrishi land vest in the Official Receiver, as they are property within Section 2 (*d*) of the Insolvency Regulation.— **19 T. L. J.**, *113*.

Ref.—19 T. L. J., 782.

**28.** Arrears of maintenance are liable to be attached and sold in execution of a decree against the party entitled to it. The prohibition against transfer is applicable only to future maintenance and not the amount that had already accrued due.

So far as the amount that had accrued due up to the plaintiff's death was concerned, it had to be treated as a debt and the heirs of the plaintiff should be allowed to recover it (F. B.).— **19 T. L. J.**, *851*.

**29.** The salary referred to in Section 52, Sub-section (1), Clause (l), Proviso (1), (which exempts the whole of the salary where the same does not exceed Rs. 14 monthly), does not lose that character by reason of its not having been drawn for some time after it accrued due. If the amount in question was claimable only as salary at the very outset, the delay in receiving it or the existence of an additional amount for such purpose for subsequent months would not effect any change in its character and justify its being treated as an ordinary debt.

The expression "on duty" in the Proviso refers to the period of accrual of the salary or allowances and not to the time when the attachment is made.— **19 T. L. J.**, *882*.

**30.** See also—

Or. XXI, r. 57.— **35 T. L. R.**, *54* (= **9 T. L. J.**, *256*).

---

**Sec. 53** [ = „ = *S. 61*]

I. **1.** See "Notes on Clauses" under Section 52.

**2.** "The provision is only an expansion of the principle already accepted with regard to implements, cattle, seed-grain and houses (see previous Rule) and is analogous

Seizure of property in dwelling-house.

54. (1) No person executing any process under this Code directing or authorising seizure of movable property shall enter any dwelling-house after sunset and before sunrise.

(2) No outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the person executing any such process has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe any such property to be.

(3) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to such woman that she is at liberty to withdraw; and, after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

---

to the protection afforded to agriculturists in several enactments, more especially in Section 22 of the Dekkan Agriculturists Relief Act, 1879." (Statement of Objects and Reasons, 1901 amending Bill).—*India Gazette, dated 21-12-1901, Pt. V.*

3. See Objects and Reasons, Page 13 *Supra.*

II. As to attachment and sale of agricultural produce, see Rules 42 and 43, and Rules 71 and 72 respectively of Order XXI.

**Sec. 54** [ = S. 268 = *S. 62* ]

I. The corresponding Section of Regulation II of 1065 was as follows:—

"268. *Seizure of property in building.*—No person executing any process under this Code, directing or authorizing seizure of movable property, shall enter any dwelling-house after sunset and before sunrise, or shall break open any outer door of a dwelling-house. But, when any such person has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe any such property to be:

*Seizure of property in zenanas.*—Provided that, if the room be in the actual occupancy of an woman, the person executing the process shall give notice to her that she is at liberty to withdraw; and after allowing a reasonable time for such woman to withdraw, and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal."

II. It may be noted that, in the new Section, the prohibition against breaking any outer door of a dwelling-house has been relaxed. The provision now made authorises the breaking open of the outer door of a judgment-debtor's house. See Note under Section 47.

III. It may also be noted that the words —"who, according to the customs of the

55. (1) Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realise such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

Property attached in execution of decrees of several Courts.

(2) Nothing in this Section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees.

---

country, does not appear in public,"—which occur after the word "woman" in Sub-section (3) of the new Section, did not occur in the old Section 263, Proviso.

Those words were in the old Indian Code of 1882, and were adopted in the original Bill which became Regulation II of 1065. But the Select Committee who reported on that Bill omitted them. They said :—"The object of the omission is to obviate difficulties which may arise in practice in the matter of determining as to who do and who do not fall under the class of 'women who according to the customs of the country do not appear in public.' It is deemed due to the sex as a whole, that the consideration contemplated by the Section should be general and not exceptional. No serious harm can arise out of it, while it would shut out all scope for possible violence to decency and delicacy."

---

**Sec. 55** [ (1) = S. 282 = *S. 63 (1)* ]
,, (2) = ,, = ,, (2) ]

I. Sub-section (1) of this Section corresponds to Section 282 of the old Regulation except that, for the words "has been attached" in the old Section, the words "is under attachment" have been substituted.

II. Sub-section (2) is new and decides the conflict of decisions under the Code of 1882, by declaring that the rule in Sub-section (1) is a rule of procedure only and does not affect jurisdiction.

**Case Law.**

1. The point for consideration was whether first defendant (special appellant) was, in virtue of the sale made in execution of a decree on the file of the Alleppey District Court, entitled to hold the disputed property as against the plaintiff who claimed under a previous sale made in execution of a decree on the file of the Shertallay Munsiff's Court. The judgment-debtor in both the cases was one and the same person.

*Held.*—The prior sale in execution of a decree must prevail against a subsequent sale is an elementary principle of law.

Although there may be several attachments on a property, the sale in pursuance of any one of them put an end to all the attachments, and the sale proceeds which occupy the place held by the property before sale, are distributed among the several attaching creditors according to their priorities.

The first defendant acquired no rights under the second sale. Under the first sale made in execution of the Munsiff's decree, plaintiff was entitled to the property in dispute.— **8 T. L. R.,** *119.*

Ref.—22 T. L. R., 147.

2. The question for determination was whether an attachment before judgment would entitle the attaching creditor to sell the property without issuing a fresh attachment after decree, as against a rival decree-holder who applied for attachment subsequent to the first creditor's decree,

*Held.*—As the order for the first sale was made at a time when there was no conflicting attachment, the sale made in pursuance of that order was legal and efficacious to vest the property in the purchaser.

The judgment-debtor had no interest left in the property at the date of the second sale, and the second purchaser took nothing under the second sale.— **9 T. L. R.**, *72.*

**3.** Where the decree of a Munsiff's Court and that of a District Court are out against a judgment-debtor, and his immovable property attached in execution of the two decrees and sold in execution of the decree of the Munsiff's Court:

*Held.*—Under Section 282 of the Civil Procedure Code, the sale by the Munsiff was void as having been made in pursuance of the order of a Court, which had no jurisdiction to direct the sale and realize the sale proceeds of property under attachment by a Court of a higher grade.—

**13 T. L. R. App.**, *36.*

Ref.—17 T. L. R., 101.

**4.** A sale by an inferior Court when the subject matter of the sale is also under the attachment of a superior Court is not, *ipso facto*, null and void, but only voidable under certain circumstances.

In cases where a Court which is ordinarily competent to direct sales of property orders a sale in contravention of Section 282, or in ignorance of the subsistence of attachment of that property by a superior Court, a party seeking to get possession of the property irregularly sold must set aside the sale within the time allowed by law (F. B.).—

**17 T. L. R.**, *101.*

Ex. & Fol.—22 T. L. R., 147.

Ref.—10 T. L. J., 347.

**5.** Sale by the inferior Court in execution of a decree, of property under attachment in execution of the decree of the superior Court is not *ipso facto* null and void but only voidable, and would become indefeasible by lapse of time, if not set aside in due course of law.

"The decision of the case appears to me to rest upon the well-known distinction between the acts of a Court done without jurisdiction or authority and those done in the irregular exercise of an admitted jurisdiction or authority. I think that the sale by the Small Cause Court (the property was under attachment by the Sub-court at the date of sale and the purchaser had notice of the attachment) falls within the latter category. When property is attached by more Courts than one, each of them has jurisdiction or authority to sell, but Section 285 declares by which of such Courts that jurisdiction should be exercised. If by mistake of law or in ignorance of an earlier attachment or of an attachment in a Court of higher grade, a Court of lower grade proceeds to sell, it is not, I think, deprived of jurisdiction to do so by the provision of Section 285. I have advisedly coupled mistake and ignorance, as the jurisdiction of a Court cannot, it seems to me, depend upon its knowledge or ignorance of facts. If an attachment in a higher Court deprives a Court of lower grade of jurisdiction to sell, the sale must be, I apprehend, invalid whether the Court of lower grade knows of it or not. If the sale is held to be in such cases only irregular, the purchaser will take an indefeasible or a defeasible title according to whether he knows or does not know of the irregularity. If he buys *bona fide* and without notice, his title will be perfect and he will not be affected by the irregularity of the proceedings resulting in the sale. If he purchases with notice he runs the risk of his purchase being set aside" (22 Bom., 88).—

**22 T. L. R.**, *147.*

Diss.—10 T. L. J., 347.

**6.** Section 282, C. P. C., relates to decrees of Courts in Travancore, and does not embrace within its scope decrees of foreign Courts. The Section applies only to cases where property is attached in

56. Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

Private alienation of property after attachment to be void.

*Explanation.*—For the purposes of this Section, claims enforceable under an attachment include claims for the rateable distribution of assets.

---

execution of decrees passed by several Courts in Travancore.

It is settled law in this State that, where property is under attachment in execution of the decrees of two different Courts, a sale by the Court of lower jurisdiction is irregular but not invalid; and a purchaser will take an indefeasible or a defeasible title, according as he purchases without notice or with notice of the attachment laid by the superior Court.

The general principle is that the title of a purchaser, not himself in fault, cannot be impaired at law nor in equity by showing any mere error or irregularity in the proceedings.— **10 T. L. J.**, *347*.

**7.** Sections 282 [new Section 55 (1) and 292 [new Section 59] mark two distinct stages of execution and are intended to serve two distinct purposes. They do not conflict with each other, but may be said to be complementary.

The object of enacting Section 282 is to prevent conflicting orders on different claims arising out of attachment of the same property by different Courts. The provision in the Section relates to cases where the property under attachment is not in the custody of any Court. As regards the property under attachment which is in the custody of Court, separate provision is made in Clause (2) of Section 269 [=Or. XXI, r. 50] of the Code, as to which Court should determine questions of title or priority between the decree-holder and any other person, not being the judgment-debtor. All that the Court is competent to do under Section 282 is to determine (1) any claim to property attached in execution of decrees of more Courts than one, and (2) any objection to the attachment thereof.

Section 292 lays down rules of procedure at the next stage of execution and provides how and under what conditions assets realised by sale or otherwise in execution, should be distributed among the decree-holders. The decree-holders who make applications under Section 292 cannot possibly dispute the judgment-debtor's claim to the property sought to be rateably divided. An application under Section 292 is not one for determination of any claim to attached property or of any objections to the attachment thereof.

The conditions entitling a decree-holder to participate in the assets under Section 292 are:—

(*a*) The decree-holder claiming a share in the rateable distribution should have applied for execution of his decree to the Court which holds the assets realised.

(*b*) Such application should have been made prior to the realisation of the assets.

(*c*) The assets must have been realised by sale or otherwise in execution of the decree.

(*d*) The attaching creditors as well as the decree-holder claiming to participate in the assets should be holders of decrees for payment of money.

(e) Such decrees should have been obtained against the same judgment-debtor.—
**18 T. L. J.,** *1291.*

**Sec. 56** [= S. 273 = *S. 64*]

**1.** The corresponding Section in Regulation II of 1065 was as follows:—

"273. *Private alienation of property after attachment to be void.*—When an attachment has been made *by actual seizure or by written order duly intimated and made known in manner aforesaid,* any private alienation of the property attached, whether by sale, gift, mortgage or otherwise, and any payment of the debt or dividend, or a delivery of the share, to the judgment-debtor *during the continuance of the attachment,* shall be void as against all claims enforceable under the attachment."

**2.** The words italicised first have been omitted as being mere surplusage. See Order XXI, Rules 49 and 52. An attachment to render a subsequent alienation invalid must be made in the manner prescribed by the Code.

**3.** The words "contrary to such attachment" were substituted for the italicised words at the close of the Section, to make it clear that the object of the Section is merely to prohibit alienations contrary to the attachment. The words in the old Section were considered too wide as comprising alienations that could not possibly prejudice the rights of an attaching creditor.

### Case Law.

**1.** First defendant held two decrees for money against 2nd and 3rd defendants—623 of 1056 and 226 of 1057. In execution of the decree in No. 623, 1st defendant attached the property in dispute on 22nd Dhanu 1058, and pending this attachment, 2nd and 3rd defendants sold the property to plaintiff on the 18th Margali, 1061, for the purpose, among other things of satisfying a portion of the decree in No. 623. Subsequent to this private sale to plaintiff, 1st defendant laid another attachment on the same property in execution of his decree in No. 226 and, eventually, obtained satisfaction of his decree in suit No. 623 by sale of other properties belonging to the 2nd and 3rd defendants, the judgment-debtors. The question raised was as to the validity of the private sale made to plaintiff pending the attachment in execution of the decree in No. 623 subsequently discharged by public sale of other properties.

*Held.*—If a private alienation made pending an attachment in execution of a decree is valid against a subsequent attaching creditor in the event of the decree for which the attachment was made being afterwards discharged, it is equally so as against all subsequent attaching creditors, whether they be the persons who first attached the property or otherwise, and so long as the subsequent attaching creditor does not claim under or through the first attachment, he is not, on the construction of Section 224 of the old Civil Procedure Code, entitled to avoid the prior private sale, and to treat the property as still saleable as the property of the judgment-debtors (vendors).

The accidental circumstance, namely, that the creditor who first attached in execution of one decree is also the holder of another decree, does not alter the rights of the parties. He could not have realised any portion of his second decree, without putting an actual attachment on the property, and he delayed taking out the attachment under the second decree until the private sale had been made. He cannot, any more than a third person attaching the property under his decree, take the benefit of the first attachment made under another and separate decree.—

**6 T. L. R.,** *40.*

2. A obtained a money decree against B and C and attached their property. During pendency of the attachment, the property was, for the express purpose of satisfying the decree, sold to plaintiff's vendor who deposited the decree amount in Court. B subsequently contended in the Munsiff's Court that his having suffered incarceration in jail for the decree-debt, must be taken to have completely discharged the debt and was allowed to draw the money before the order was reversed in appeal. A, after the reversal of the Munsiff's order, instead of recovering from B the amount wrongly drawn by him, moved the Munsiff's Court to proceed with the sale of the property, in pursuance of the original attachment. The suit was for a declaration that the property was not liable to sale in execution of A's decree, or to recover the purchase money from A, B and C. It being contended (1) that the original attachment not having been expressly withdrawn by an order of Court, must be considered to be still in force, and (2) that the private sale to plaintiff's vendor having been made during pendency of the attachment, was null and void.

*Held.*—(1) The attachment of property made in execution of a decree comes to an end the moment the whole amount due under it is paid into Court. The object of an attachment is to compel the debtor to pay up the judgment-debt. After the payment of the debt, the continuance of the attachment would be unjust and meaningless. The law does not require the formal withdrawal of an attachment on payment into Court of the decree-debt, but leaves it to the option of the parties to apply for and obtain the order of withdrawal of attachment.—Section 272 of the Civil Procedure Code [=Or. XXI, r. 53].

(2) Private sales of properties under attachment, are prohibited in the interests of the attaching creditor only (Section 273 of the Civil Procedure Code).

(3) As the purchase money was paid into Court for the benefit of the creditor, the private sale was good and binding on the decree-holder ; and he should have recovered the same from the debtor to whom it was wrongly paid by the Munsiff.

Consequently, the plaintiff's purchase, in the circumstances of the case, entitled him to the declaration sought for.—

**12 T. L. R.,** *23.*

Appl.—18 T. L. R., 79.

3. Where a court sale of certain property under attachment was set aside by a Munsiff on an application made by a claimant to such property, and the property was, thereupon, conveyed to plaintiff under a sale by the owners thereof, including the claimant, before a reversal of the Munsiff's order was obtained by the auction-purchaser in appeal :

*Held.*—(1) The proceedings subsequent to the Court sale having been finally cancelled by the order of the District Court, the purchaser under the Court sale acquired a complete title to the property on the date of sale, and in consequence, the judgment-debtor ceased to have any interest in the property and could, therefore, convey nothing to the plaintiff,

(2) A property having been already under attachment before the sale, the effect of the Munsiff's order setting aside the court sale was simply to leave the property as it was on the date of sale, and any private alienation of the property whilst under attachment is void under Section 273, unless the alienation was made with the consent of the decree-holder and under the express permission of the Court obtained in accordance with the provisions of the Code.

(3) The purchaser not having been a party to the proceedings subsequent to the private alienation to plaintiff, cannot be affected by fraud, if any, in such proceedings.— **13 T. L. R.,** *50.*

4. In execution of a decree the plaint property was attached in Masi 1071. During the continuance of a prior attachment dated 25th Panguni 1066 of the same property and

in execution of the same decree, the plaintiff obtaieed a mortgage from the decree-debtor. The decree-holder did not apply for sale for a period of three years from the date of first attachment, and the order cancelling that attachment was passed on his application for sale proclamation after three years, *i, e.,* in Vycausi 1069. The suit was for the cancellation of the attachment of 1071 and the enforcement of plaintiff's mortgage lien.

*Held.*—The prior attachment was virtually cancelled by the executing Court when it ordered the second attachment.

Though the Munsiff had not expressly passed an order under Section 272, C. P. C. [=Or. XXI, r. 53], cancelling the prior attachment, there could be no doubt that he meant to cancel it when he passed the order of 1069 to get a list of properties and to issue order for attachment. Section 272 requires the executing Court to record with reasons a formal order only for the continuance of a sale attachment, *i. e.,* one more than three years old in which the decree-holder has taken no sale proceedings. The executing Court had power to withdraw the attachment of its own motion without an application by the party interested. The decree-holder without attempting to question the executing Court's order for lists, etc., took out process for the second attachment which was the only one the plaintiff sought to cancel in the suit. The Court having intended to cancel the first attachment as it could do in the absence of special reasons to the contrary, and the decree-holder having understood its order in that light, the first attachment must clearly be taken to have been cancelled by the order of 1069. The question is always of the intention of the executing Court as to whether it did or did not exercise the discretion it undoubtedly has, to cancel or continue the attachment.

The prohibition under Section 273 against alienations during the pendency of an attachment did not apply to the mortgage in question. Section 273 makes alienations of attached property void only as against claims enforceable under the attachment. The decree-holder's claim was clearly not one enforceable under the first attachment which was cancelled. It was enforceable only under the subsequent attachment of 1071, and the melotti to the plaintiff not having been created during the continuance of that attachment was clearly not vitiated by it. It was therefore not invalid because of the attachment which the plaintiff ought to cancel.— **16 T. L. R.,** *149.*

Dist.—43 T. L. R., 252
( = 17 T. L. J., 625).

**5.** The first defendant obtained a money decree against the 2nd defendant and in execution thereof attached the plaint property, which belonged to the latter, on 2-4-1082. No further steps were taken and the execution application was struck off on 23-5-1082. The first defendant again applied for attachment on 4-11-1087, which application was rejected on 12-11-1087. The application for attachment was renewed on 4-7-1088. This application was allowed, and the attachment was duly effected on 30-7-1088. The plaintiff, on the strength of a sale-deed obtained by him on 12-10-1087 from the second defendant, the admitted owner of the plaint property, preferred a claim objecting to the attachment. The claim being rejected, the present suit was instituted for declaration of plaintiff's right and title and for cancellation of attachment &c. The defence contended that the plaintiff's sale was invalid, as it came into existence during the pendency of the attachment laid on the plaint property in 1082.

*Held* (On special appeal, reversing the the decrees of the Courts below).—The execution Court, by ordering the second attachment, intended to cancel the first attachment, and did really cancel it. If it was intended that the first attachment should continue, the Court would have recorded special orders therefor and ordered its continuance. The earlier attachment being

thus non-existent, and the second attachment, the only subsisting one, having been made after the date of the plaintiff's sale, the latter transaction was not a void one.—
**8 T. L. J.**, *382*.

**6.** An attachment effected under the C. P. C., (whether before or after judgment), does not create a charge or lien on the attached property; it only renders void during its continuance any private alienation by the judgment-debtor of the property attached or payment to him of any debt due to him which had been attached in so far as all claims enforceable under the attachment are concerned, in order that the judgment-creditor may avail himself of the further processes mentioned in the C. P. C., for the purpose of realising the fruits of his decree.

In a suit of the plaintiffs against the second defendant on an alleged account, the plaintiffs attached before judgment certain money due to the former by the Sirkar and the suit was eventually decreed. While this suit was pending, the 1st defendant obtained a money decree against the 2nd defendant, and in execution thereof attached the money which the plaintiffs had attached before judgment in the former suit. Notwithstanding the objection of the plaintiff, the money was allowed to be drawn by the 1st defendant on security, being furnished. The plaintiffs on execution of their decree prayed for recovery of the money drawn by the 1st defendant; but their prayer was not granted. The present suit is for declaration that the decree obtained by the 1st defendant against the 2nd defendant is not binding on them (plaintiffs) and for recovery of the money drawn by the 1st defendant.

*Held.*—The plaintiffs have not, by virtue of their attachment, obtained a lien or charge on the amount drawn by the 1st defendant as to entitle them to maintain a suit for recovery and for this purpose to attach the decree obtained by him against the 2nd defendant. The right to the money could only be acquired by bringing the right of the judgment-debtor (2nd defendant) to it, to sale in pursuance of the attachment made and by obtaining a title thereto.

It is clear from the language of Section 273 that an attachment only renders void, during its continuance, any private alienation by the judgment-debtor of the property attached or payment to him of any debt due to him which had been attached in so far as all claims enforceable under the attachment are concerned. The object of the Legislature in enacting the provisions of Section 273 seems to be that what has been brought into *custodia legis* should be allowed so to remain uninterfered with by the judgment-debtor or by any other person who has no title thereto, such as a trespasser, in order that the judgment-creditor may avail himself of the further processes mentioned in the Code of Civil Procedure, for the purpose of realising the fruits of his decree which object would be defeated by the judgment-debtor disposing of it as he liked or being permitted to receive payment of any debt due to him. If it is deemed that an encumbrance or lien on the property attached is created by the attachment itself, there is nothing to have prevented the Legislature to have said so in express terms. Such charge, if any, would undoubtedly have no operation whatever as against other creditors of the judgment-debtor. If the attaching creditor is to be treated as the owner of an encumbrance or charge on the property, the result would be that when the property is sold in execution, say, subject to three prior encumbrances, the attaching creditor would be entitled to be paid the full amount of his decree-debt—which *ex hypothesi* has become a charge on the property in consequence of his attachment—before the decree-holders get anything, notwithstanding that these latter may have before the realisation of the assets by the execution sale, applied to the Court for execution of their money decrees. This result would be contrary to the provisions of Section 292, C. P. C., [new Section 59] and is therefore another ground which seems to militate

against the position that an attachment creates a charge.— **36 T. L. R.,** *56.*

**7.** The alienation which Section 273 is intended to prevent is an alienation which, if permitted, would defeat claims legally enforceable under the decree in execution of which the property alienated has been attached. Where, however, an alienation of attached property is made under such circumstances that it in no way interferes with the rights secured by his decree to the attaching creditor, Section 273 is no bar to such alienation.

A sale-deed was executed to plaintiff by all the members of a Marumakkathayam Tarwad in respect of certain property, pending an attachment placed on it in execution of a decree obtained by one of the members thereof against another member for a private debt contracted by the latter while a junior not in management. The plaintiff, on the strength of his sale, sued to set aside the auction sale of the same property held subsequent to his sale. The Courts overruled the defence plea of non-maintainability of the suit which was accordingly decreed in favour of the plaintiff. In special appeal by the original decree-holder's assignee (at whose instance the auction sale was brought about) and the auction-purchaser, it was argued that the plaintiff's sale was void under Section 273, as it was executed pending attachment in execution.

*Held.*—If the decree-debt were the private debt of a junior member, and the property attached for that debt were Tarwad property over which the decree-debtor had no special right, the attaching decree-holder could enforce no legal claim under the attachment. The sale to the plaintiff in no way stood in the way of execution of the decree to the extent of the decree-holder's legal claim, if any.— **38 T. L. R.,** *288* **(=12 T. L. J.,** *197***).**

**8.** In the course of the insolvency proceedings started against an insolvent, his creditors who had, under the provisions of the Civil Procedure Code, attached his properties before the order of adjudication, claimed preference in the distribution of the insolvent's assets.

*Held.*—The rights of the creditors must be determined by the provisions of the Insolvency Regulation and not by those of the Civil Procedure Code.— **38 T. L. R.,** *245* **(=12 T. L. J.,** *270***).**

**9.** As the law stands, it has to be held that mere attachment without actual notice to the judgment-debtor is sufficient to invalidate subsequent payments made to the decree-holder of the attached decree contrary to such attachment.—[See Or. XXI, r. 51 *re* change introduced].— **14 T. L. J.,** *145.*

Fol.—42 T. L. R., 342.

**10.** It is well-established that a judicial sale releases a property from all the attachments to which it is subject, the reasons being that there is nothing in the Code to prevent such a sale pending an attachment. Section 273 is directed only against private sales and the attaching decree-holder's rights are sufficiently protected by Section 292 of the Code [new Section 59], under which he is entitled to share in the sale proceeds.

But this rule can obviously apply only to cases where the sale is perfected and is subsisting. If the sale is not confirmed, or if it is set aside after confirmation, it ought not on principle to affect the antecedent proceedings in execution.— **15 T. L. J.,** *364.*

**11.** See also—

Or. XXI, r. 51.—**18 T. L. J.,** *207.*
" r. 53.—**11 T. L. R.,** *18.*
" r. 57.—**35 T. L. R.,** *54* **(=9 T. L. J.,** *256***).**

*Sale.*

Purchaser's title.

57. Where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

---

**Sec. 57** [ = S. 313 = *S. 65* ]

I. The corresponding Section of Regulation II of 1065 was as follows :—

"313. *Certificate to purchaser of immovable property.*—When a sale of immovable property has become absolute in manner aforesaid, the Court shall grant a certificate stating the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear the date of the confirmation of the sale, and, so far as regards the parties to the suit and persons claiming through or under them, the title to the property sold shall vest in the purchaser from the date of such certificate and not before: Provided that the decree under which the sale took place was still subsisting at that date."

The provisions of the above Section are embodied with alterations in the new Section 57 and Order 21, Rule 91. The old Proviso has been omitted altogether, and it is no longer necessary that the decree should be subsisting at the time of the confirmation of sale.

II. "The change made in this Section is noteworthy. Title passes not on confirmation of sale, as it now does, but on the sale taking place. It is in harmony with Order 21, Rules 89 and 90, of the British Code, whereby no right is recognised which was brought into existence subsequent to the sale. The sale passes title subject to defeasance on certain grounds, within a short and definite period only, and available to certain persons only. The effect of the existing Code is to confer no title to the auction purchaser, and continue the title in the judgment-debtor, till the sale is confirmed."— *Notes on Clauses.*

**Case Law.**

1. When a judgment-debtor's property is sold in public auction in execution of a valid subsisting decree of an Appellate Court and a third party *bona fide* purchases it, the debtor cannot sue to set aside the sale by reason of the subsequent reversal of the decree upon review, but must look to the judgment-creditor for the value of the property sold.

There is nothing in the Code to support the contention that an auction-purchaser buys property subject to the condition of the sale becoming absolute or void by the Appellate Court's subsequent confirmation or reversal of the decree of the Court of first instance.

It may be argued that natural justice requires the restoration of the property to the judgment-debtor, when the decree which led to the sale is afterwards reversed. Here is a conflict between the interests of the debtor and of the innocent purchaser, and the question is which of these two is entitled to protection. The interests of the purchaser ought to prevail over those of the debtor. If, for instance, the debtor's property is sold, if the creditor is a pauper, and if there is reason to apprehend that, in case of reversal of the decree, money paid to him cannot be recovered from him, the debtor has the power of protecting his interests by applying to the Court that executes the decree to demand security from the creditor—whereas, the auction-purchaser is bound to pay the purchase-money

into Court unconditionally, and has no means of protecting himself.— **2 T. L. R.**, *95.*

**2.** The Court executing a decree is bound to grant a certificate of sale to the purchaser in auction on the sale being confirmed and that without any application from the party.— **3 T. L. R.**, *65.*

Ref.—42 T. L. R., 362
(=16 T. L. J., 330).

**3.** By his purchase at the court-sale, a person cannot be placed in a position better than that of the original creditor whose rights vested in him under the purchase.— **4 T. L. R.**, *23.*

**4.** An auction sale of immovable property vests, in the purchaser, the right, title and interest of the judgment-debtor, the decrees previously obtained by the latter for the enforcement of his rights on the lands enuring for the benefit of the purchaser.— **5 T. L. R.**, *1.*

**5.** A purchaser under a sale held in execution of a decree against a Marumakkathayam Tarwad, if not a party to the suit wherein that decree was passed, is not bound to prove either consideration or Tarwad necessity for the debt which formed the basis of the decree, as against subsequent objectors. His title under the purchase is unimpeachable so long as no fraud is proved.— **8 T. L. R.**, *125.*

Fol.—13 T. L. R., 155.
Ref.—21 T. L. R., 239.

**6.** A court-sale of property held while there was a valid hypothecation subsisting thereon, would be subject to the lien created by such hypothecation.—**11 T. L. R.**, *67.*

**7.** Suit by a purchaser of a hypothecation bond at a Court auction, to recover from the obligor and the hypothecated property the amount due under the bond. The Court sale not having been conducted under the procedure applicable to real property and the sale certificate granted to plaintiff not having been registered, it was contended that the sale was *ab initio* void.

*Held.*—A hypothecation deed consisted of two obligations—(1) to pay the debt as a simple debt, and (2) the creation of a charge on the real property in the way of collateral security.

The failure to adopt the procedure prescribed for sale of immovable property and the non-registration of the sale-certificate deprived the purchaser of the right to recover the debt as a specific charge on the property hypothecated; but the sale of the bond as movable property, did not invalidate the transfer to the purchaser, of the right to enforce the first obligation, *i. e.*, the right to recover the debt from the obligor (defendant) and his property, as a simple debt.— **11 T. L. R.**, *177.*

Overruled.—20 T. L. R., 165.

**8.** Purchase at a Court sale of a jenmi's right over property outstanding on Kanom lease, transfers the jenmi's title to the purchaser, without actual delivery of possession by the Court.

In respect of Kanom property so purchased, the purchaser could bring a suit to evict the tenant, without obtaining possession.— **12 T. L. R.**, *101.*

Ref. — 4 T. L. J., 117.

**9.** The delivery of property is not legally necessary, to complete the title of the auction-purchaser. His title becomes absolute on the confirmation of the sale, after which he is fully entitled to convey his rights to others.— **12 T. L. R.**, *111.*

Fol.—26 T. L. R., 131
(=1 T. L. J., 195).
K. P., 40.
Ref.—30 T. L. R., 211.

**10.** Where a prior mortgagee brings the mortgaged properties to sale in a suit to which a subsequent mortgagee is not made a party, and where the latter has no knowledge of either the suit or sale, his (the

latter's) right to redeem from the purchaser at the sale, will not be affected by the decree or the sale.— **12 T. L. R.,** *141.*

**11.** Where A, the mortgagee of immovable property who purchased the equity of redemption of a certain property sold in auction for a decree debt due by B, the mortgagor, omitted to obtain a certificate of sale from Court to evidence his purchase and symbolical possession of the property under Court process :

*Held.*—The purchaser's title became perfect by the confirmation of the sale by Court. The purchaser being already in actual possession, no symbolical possession need be obtained. The grant of certificate is a duty of Court after confirmation of sale; and there is no provision in the Code requiring the obtaining of certificate by purchaser to complete the sale.— **12 T. L. R.,** *192.*

Ref.—26 T. L. R., 131
(= 1 T. L. J., 195).

**12.** Where a mistake occurs in an order passed in the execution department in respect to the extent of property, a fresh sannad might be issued with the proper extent entered, and the omission cannot affect the plaintiff's right to the land within the boundaries set out in the sale certificate.—
**13 T. L. R.,** *5.*

**13.** An auction-purchaser is entitled to a reimbursement of his purchase money when the sale is set aside on the ground of irregularity, either by a separate suit or on an application made under Section 308 of the Civil Procedure Code. [=Or. XXI, r. 87].— **14 T. L. R. App.,** *38.*

Dist.—6 T. L. J., 220.

**14.** Where a house did not pass to an auction-purchaser under a sale certificate which covered the whole garden including the area on which the house stood and it was contended by the judgment-debtor that as "house" was an immovable property, he was entitled to enjoy it as such :

*Held.*—The judgment-debtor should remove the house from the garden or sell it to the auction-purchaser.—
**16 T. L. R.,** *170.*

**15.** The boundaries and not the quantity by subsequent measurement must be taken to indicate the identity of a land.—
**18 T. L. R.,** *17.*

**16.** Once a sale is made absolute by order of Court, there is no appeal against that order, and still less so against an order passed rejecting an application to set aside such order.

Once a decree is given effect to, and the sale made absolute, it cannot afterwards be called into question.— **18 T. L. R.,** *157.*

**17.** In the interval between the auction-sale and the confirmation thereof, there is not merely a contract for sale but an inchoate transfer of title which only requires confirmation to perfect it. The auction-purchaser has therefore a title to the properties though not a perfect one even before confirmation of sale which he could convey to others.— **21 T. L. R.,** *152.*

Ref.—26 T. L. R., 131
(=1 T. L. J., 195).

**18.** Mere inadequacy of the price realised at an auction sale is no ground for refusing to confirm the sale.—
**21 T. L. R.,** *206.*

**19.** In execution of a decree against the owner of a garden and the house thereon, the garden was put up to auction and purchased by the predecessor in title of plaintiff. Subsequently in execution of another decree against the said owner, the house was sold in auction and purchased by the predecessor in title of the first defendant. In a suit by plaintiff to compel the first defendant to remove the materials of the house, wherein it was contended that the house was not liable to be removed, but that the plaintiff should be directed to pay the value of same :

*Held.*—As the sale and purchase of the house was subsequent to the sale of the house site, the purchaser of the house was not entitled to claim the value of the house from the purchaser of the house site.

When he purchased the house, he had no right to occupy the site of the house and he must be deemed to have intended to purchase and could have purchased only the materials of the house and not also the right to compel the owner of the site to allow the house materials to stand on the site on penalty of the latter being obliged to pay compensation if he does not allow the building to continue to stand on.—

**23 T. L. R.**, *165.*

**20.** It is only when a decree has been obtained against the Karanavan of a Malabar Tarwad as representing the Tarwad, that the decree-holder can proceed against the Tarwad properties.

The decree prohibited the holder from proceeding against the Tarwad properties. Their sale was invalid and the decree-holder-purchaser acquired no title under it.

**1 S. D.**, *210.*

**21.** The title of an auction-purchaser under an execution sale, whether as against the parties to the suit or against third parties, vests from the date of confirmation under Section 313, and not from the date of the bid.— **2 S. D.**, *76.*

[*Vide* the new Section and the Notes above].

**22.** A and B were two hypothecatees of the judgment-debtor. B, the subsequent hypothecatee, obtained upon his hypothecation bond, a decree to which A was no party. In the court-sale that ensued in execution of his decree, B purchased and obtained delivery of possession of the properties. A then filed a suit against the judgment-debtor without impleading B as a party, obtained a decree, brought the judgment-debtor's right in court-auction and purchased it himself. A was successfully resisted by B from obtaining possession of the property. In a suit by A against B for possession of the property:

*Held.*—The suit was not maintainable. The priority of the two hypothecatees was not to be determined by the priority of their respective deeds, but by the date of sale and recovery of possession.—

**3 S. D.**, *43.*

**23.** It is a recognised principle of law that a purchaser represents the judgment-debtor to the extent of the right, title and interest he had in the property at the date of the sale. This priority of interest is enough to create against the auction-purchaser the same bar by *res judicata* that would apply to the judgment-debtor under whom he claims (F. B.).— **3 S. D.**, *61.*

Doubted.—43 T. L. R., 108
(= 17 T. L. J., 593).

**24.** It is only in respect of immovable properties that formal confirmation and sale certificates are necessary. In the case of movables including debts, the receipt for the payment of the auction price of itself gives absolute title to the purchaser.—See Section 294, C. P. C. [=Or. XXI, r. 74].

A hypothecation right must only be sold as movable property, and no confirmation of sale and delivery of sale certificate is therefore necessary.

Even if the sale ought to have been as immovable property, it has been held that, though there is no formal confirmation and a sale certificate, the unconfirmed sale gives a title to equitable relief to the purchaser on which he can bring a suit. The unconfirmed sale is virtually a sale, and not a mere contract for sale, and the defect of the purchaser's title in such a sale is purely technical.— **3 S. D.**, *137.*

**25.** The effect of Sections 310 [=Or. XXI, r. 88], 312 [=Or. XXI, r. 90] and 313 is that the right, title and interest of the judgment-debtor alone passes to the purchaser at a Court-sale, subject, however, to the condition that the purchaser may recover back his purchase money, when he

finds that the judgment-debtor has *no saleable interest at all*. There is no implied warranty in such sales as there would be in sales by private contract.— **4 S. D.**, *63*.

**26.** The plaintiff, the court auction-purchaser of judgment-debtor's mortgage rights in the plaint property, having been in his attempt to get possession of the property successfully obstructed by a superior mortgagee and the Court not having removed the obstruction, sued for refund of the purchase money but the lower Courts disallowed the plaint.

*Held*.—(1) Plaintiff was entitled to no relief as the plaint did not allege that the judgment-debtor had no saleable interest at all in the property in which case alone a suit would lie by the auction-purchaser for refund of money.

The Zillah Judge was wrong in his observation that plaintiff should have proceeded against the obstructor, the latter not being a necessary party at all to this suit.

(3) The Munsiff was wrong in saying that the judgment-debtor against whom plaintiff claimed no relief was the person properly liable.— **K. P.**, *263*.

**27.** In execution of a money-decree against the mortgagor of plaint properties, the latter were attached in 1076; but they were sold subsequent not only to the suit by the mortgagees but even to the decree for sale passed therein. Plaintiff who represented the court-auction-purchaser of the rights of the mortgagor brought this suit for the redemption. Defendants represented the mortgagees who were the purchasers in court auction in execution of the mortgage-decree for sale. The Courts below dismissed the plaintiff's suit.

*Held* (dismissing the second appeal).—Though the attaching creditor is entitled to bring the equity of redemption to sale, yet once the sale in execution of the mortgage decree is allowed to take place and to be confirmed without plaintiff's preventing it by paying the whole amount as per the mortgage decree, the sale in execution of the money-decree becomes useless as the rights of a mortgage-decree-holder who has impleaded all necessary parties to bring the whole property to sale cannot be questioned.— **K. P.**, *584*.

**28.** On the confirmation of the sale by the Court, the auction-purchaser's title to the property becomes complete and the grant of a sale certificate is not necessary to complete such title.

The Legislature makes it the duty of the Court to grant a sale certificate in view to furnish a statutory evidence of the sale. The issue of a sale certificate is necessary before delivery can be obtained in execution, for Sections 315 and 316 [ = Or. XXI, rr. 92 and 93 ] allow the Court to order delivery to be made only after the certificate of sale has been granted.—

**26 T. L. R.**, *131*
(=**1 T. L. J.**, *195*).

Ref.—4 T. L. J., 178.

**29.** Plaintiff's Karanavan R purchased certain property in 1071 in execution of a decree obtained by him against P, a Marumakkathayee. In 1079, the plaintiff in execution of a decree against R purchased this property, symbolical possession of the property being given him by the Court in 1082. In 1084, plaintiff sued for recovery of possession of the property alleging trespass by defendants 2 and 3, the widow and son respectively, of P.

*Held*.—R into whose shoes plaintiff had stepped under his auction-purchase in 1079, not having obtained possession, actual or symbolical, in pursuance of the sale in his favour within 12 years of the date of his auction-purchase, the plaintiff's suit was barred under Article 115 of the Limitation Regulation. The symbolical delivery obtained by the plaintiff was of no avail whatever to him, as defendants 2 and 3 were not parties to either of those suits and could, in no sense, be regarded as heirs of P.—

**26 T. L. R.**, *339*
(=**2 T. L. J.**, *57*).

Dist.—27 T. L. R., 139.
Ref.—29 T. L. R., 166.

**30.** The vendee of certain immovable properties agreed with the vendor to pay part of the sale price to certain creditors of the vendor. The vendee did not pay the creditors and the latter were subsequently paid by a third party. The vendor and the vendee claimed the benefit of such payment each to the exclusion of the other.

*Held*.—The vendee having failed to perform his part of the contract and such performance having since become impossible, he was not entitled to retain part of the purchase money, while keeping in his possession the lands purchased, and he was bound to pay such purchase money to the vendor (F. B.).— **27 T. L. R.,** *241* (**= 2 T. L. J.,** *393*).

**31.** Delivery of symbolical possession of property, purchased in execution sale, operates to give the person so put in possession a fresh cause of action. Consequently a suit by a decree-holder-auction-purchaser, who has obtained through Court symbolical delivery of possession of the property purchased by him, for recovery of possession of the same from a person in actual possession of it under a title derived from the judgment-debtor subsequent to the attachment but before the auction-sale in execution of the decree, is not barred under Section 238 of the Civil Procedure Code [new Section 40], even though he could have obtained actual possession under Section 315, Civil Procedure Code [= Or. XXI, r. 92 ], inasmuch as the proceedings in execution ended with the delivery of formal possession and there was nothing further for the execution Court to do in the matter.— **29 T. L. R.,** *166*.

**32.** Plaint schedule property, belonging to the 1st defendant, was hypothecated, in order, to plaintiff, second defendant, third defendant, and another person in 1070, 1073, 1077 and 1080 respectively. In execution of a money decree obtained against the first defendant, the equity of redemption of the property was sold in Court auction and purchased by plaintiff in 1081. The purchase was subject to all the hypothecations except that to third defendant. Subsequently, the last hypothecatee (*i. e.*, of 1080) obtained a decree on his hypothecation, and in execution thereof the property was again sold subject to the hypothecation in favour of the third defendant, and purchased by second defendant, the second hypothecatee. Plaintiff not having enforced his sale certificate, second defendant enforced his and got possession. Plaintiff relinquishing his rights under the court purchase, brought a suit for recovery of his debt by sale of the hypotheca, but his suit was dismissed on the ground that he was not entitled to go back upon his purchase. Plaintiff brought the present suit to recover his debt by sale of the hypotheca or for recovery of possession of property with mesne profits from the date of his purchase. It was contended on behalf of the second defendant that plaintiff was entitled to neither of the reliefs claimed. The Court of first instance held that plaintiff was not entitled to the first relief claimed, and that in regard to the second he was not entitled to recover possession from 2nd defendant, without paying the amount due under the hypothecations, subject to which he had purchased the equity of redemption in court auction in 1081.

*Held* (on appeal).—The plaintiff was not entitled to recover the amount due under his hypothecation by sale of the hypotheca, as the decision against him in the first suit operated as *res judicata* so far as that question was concerned.

As the plaintiff was not a party to the decree in execution of which second defendant purchased the property, the court sale in favour of the latter was not binding on the plaintiff.

Second defendant could not be in a better position than the first defendant whose rights he purchased: as first defendant could not resist plaintiff's claim to possession, second defendant likewise could not do so.

Even independently of the first defendant, the second defendant was only the holder of two hypothecation rights, and as the right to be in possession was not one of the rights of a hypothecatee, second defendant could not resist plaintiff's claim to recover possession under his auction-purchase.— **3 T. L. J.**, *41*.

**33.** Plaintiff who purchased the equity of redemption of certain property, in execution of a decree for money, sued for recovery of the property from defendant who was in possession as mortgagee but who subsequent to plaintiff's Court sale had himself purchased the equity of redemption in Court auction. Defendant pleaded that the Court sale to plaintiff was bad as the plaintiff's decree had been fully satisfied and as there was nothing due to him on the date of the sale in his favour. Plaintiff in reply said that as the defendant's right to have the sale in his (plaintiff's) favour set aside by suit was barred, it was not open to the defendant to set up such a defence as it would virtually enable him to do indirectly what he could not have done directly.

*Held*.—The defendant was entitled to challenge the validity of the Court sale in plaintiff's favour though it was earlier in date than in his (defendant's) favour, and though his right to avoid it by a suit was barred.

'The defendant in a suit not being an active party seeking the aid of the Court can under certain circumstances set up certain pleas which will not be available to the plaintiff.— **3 T. L. J.**, *356*.

Ref.—10 T. L. J., 347.

**34.** An auction-purchaser of the equity of redemption in execution of a decree is entitled to bring a suit for redemption of the mortgage even without obtaining formal delivery of possession under his sale-certificate in execution Court.— **30 T. L. R.**, *211*.

Ref.—19 T. L. J., 998.

**35.** As soon as an *ex parte* decree is set aside, the Court sale held in execution of that decree falls through and any fresh decree, even if subsequently made in favour of the plaintiff, cannot validate such sale.— **34 T. L. R.**, *163*.

**36.** When once a Court-sale is confirmed, it is the duty of the Court to cause a certificate of sale to be prepared and to execute it for delivery to the purchaser. The Civil Procedure Code does not impose on the the purchaser the duty of making an application a condition precedent to the issue of the certificate.— **36 T. L. R.**, *22*.

**37.** A suit brought by an auction purchaser for recovery of possession of property from the judgment-debtor is governed by Article 115 of the Limitation Regulation (old), and time runs from the date of actual sale and not the date of confirmation.— **37 T. L. R.**, *63* (=**11 T. L. J.**, *129*).

**38.** Where the Appellate Court sets aside the original decree and passes a new decree in lieu thereof, an auction-purchase made by the decree-holder in execution of the original decree, which has been set aside, cannot stand.— **15 T. L. J.**, *272*.

**39.** See also—

Sec. 40.— **1 T. L. J.**, *86*.
**6 T. L. J.**, *22*.
**38 T. L. R.**, *291* (=**13 T. L. J.**, *79*).
**14 T. L. J.**, *356*.
**15 T. L. J.**, *431*.
„ 56.— **13 T. L. R.**, *50*.
Or. XXI, r. 64.—
**26 T. L. R.**, *254* ( = **2 T. L. J.**, *66*).
**38 T. L. R.**, *17* (= **12 T. L. J.**, *278*).
„ r. 86.—**25 T. L. R.**, *240*.
**13 T. L. J.**, *438*.
**38 T. L. R.**, *241* (=**12 T. L. J.**, *162*).
„ r. 87.—**20 T. L. R.**, *235*.
„ r. 89.—**2 S. D.**, *269*.
„ r. 94.—**25 T. L. R.**, *248*.

58. (1) No suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff.

(2) Nothing in this Section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted ie the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

---

Sec. 58 [= S. 314 = *S. 66*]

I. The corresponding Section in Regulation II of 1065 was as follows :—

"314. *Bar to suit against purchaser buying benami.*—No suit shall be maintained against the certified purchaser on the ground that the purchase was made on behalf of any other person, or on behalf of some one through whom such other person claims.

Nothing in this Section shall bar a suit to obtain a declaration that the name of the certified purchaser was inserted in the certificate fraudulently or without the consent of the real purchaser".

II. In regard to the new Section, the Notes on Clauses say :—

"This Section is far more stringent against claims of *benami* purchaser than the corresponding Section in the existing Code. Whatever may have been the reasons which led to the practice of making *benami* purchases, judicial sales should be free from such questionable practice as a *benami* purchase."

**Case Law.**

**1.** A, a certified purchaser of immovable property sold in execution of a decree, mortgaged it to plaintiffs who sued to recover same from the defendants who were in possession. The defendant, the representative of A's Tarwad, contended that the purchase at court-sale by a junior member of his Tarwad, was made on behalf of the Tarwad, and that, therefore the mortgage to plaintiffs was invalid,

*Held.*—No defendant could set up the plea that a certified purchaser at sale held in execution of decree, purchased not on his own behalf, but *benami* for another.—
**9 T. L. R.,** *190.*

Overruled,—16 T. L. R., 61.
Ref.—2 T. L. J., 380.

**2.** Where a plaintiff, an auction-purchaser, who alleged himself to be the *benami* for second defendant at the time of purchase, had brought a suit under his original purchase, for recovery of property from the first defendant to whom the second defendant had made an assignment of the same:

*Held.*—The first defendant was not debarred from proving her title to the property as against the certified auction-purchaser, the plaintiff. Section 314, C. P. C., only bars the maintainability of suits brought *against* certified purchasers.—
**13 T. L. R.,** *86.*

Appr.—16 T. L. R., 61.

**3.** Section 314 which bars a suit against a court purchaser on the ground that the purchase was *benami*, does not bar a defence alleging the same ground in a suit by such a purchaser (F. B).

The object of the Section is to prevent disputes between the purchaser at an execution sale and a person claiming that the certified purchaser has purchased *benami* for him, but the Section is confined to a suit brought against the certified purchaser.— **16 T. L. R.,** *61.*

Ref.—2 T. L. J., 380.

**4.** Section 314 prohibits the institution of a suit against a certified purchaser in court-auction on the ground that the purchase was made on behalf of another person; and to put a narrow and forced construction upon the Section will be to defeat its object.— **1 T. L. J.,** *189.*

**5.** Plaintiff, alleging that in execution of a decree against him, the defendant, at his instance, purchased the plaint and other properties in court auction in pursuance of an agreement entered into before the Court sale, whereby the defendant was to pay himself the amount deposited by him in Court, by private sale of some out of several items purchased in the execution sale, and to reconvey the remaining items to the plaintiff, together with the surplus, if any, of the sale proceeds, and further, alleging that he made the defendant sell some of the properties to a third party, getting the latter to pay the price to defendant, brought the suit to compel defendant to re-convey the plaint items, and for recovery of the balance of proceeds of the sale of the other items left after reimbursement of the amount due to the defendant.

*Held.*—On the allegations in the plaint the suit was virtually one for a declaration that defendant's purchase was made *benami* for the plaintiff, and as such, Section 314 was a bar to the maintainability of the suit.— **2 T. L. J.,** *380.*

**6.** When an auction-purchaser seeks on the strength of such purchase to enforce his right against others in possession, it is open to the latter as defendants to plead that the sale relied on by the plaintiff is invalid and not binding on them. The Limitation Regulation does not stand in their way.— **10 T. L. J.,** *347.*

**7.** A defence available to a creditor that an alienation by his debtor is voidable on the ground that it was one in fraud of creditors, is, on principle, available to purchasers in auction, of properties alienated in execution of the decree obtained by that creditor (F. B.).— **38 T. L. R.,** *297* (= **12 T. L. J.,** *359*).

Ref.—16 T. L. J., 453.

**8.** The plaintiffs claiming to be the owners of the scheduled properties, which they leased to the 2nd defendant, sued for the recovery of the same, alleging that the 2nd defendant had made default in the payment of rent since 1092 and that 2nd defendant in collusion with the 1st defendant persisted in his refusal to execute a renewed pattachit.

The 2nd defendant did not contest the suit. The 1st defendant contended that he was in possession as the auction-purchaser of the property. He traversed the plaint allegations that the bond on which he sued in O. S. 94 of 80 was taken *benami* in his name on behalf of the plaintiffs, that he instituted the said suit, obtained the decree therein and purchased the property in execution as *benamidar*.

He also contended that the plaintiffs had no right to claim any relief inasmuch as such claim was repugnant to the provision of Section 314.

The Munsiff found that the 1st defendant was throughout acting only as *benamidar* for the plaintiffs. He however dismissed the suit, holding that it was barred by Section 314.

On appeal to the High Court:

*Held.—Per Chatfield, J.*—The question whether the operation of Section 314, is excluded by the fact that the 1st defendant throughout the history of the case acted as *benamidar* for the plaintiffs is a somewhat difficult one. The authorities do not lay down a highly consistent rule.

Either the Section should be construed as subject to equitable considerations, so that it should not be used to effect a fraud, in which case it will be practically useless or it should be strictly construed irrespective of the result that may follow. On the face of it, Section 314 imperatively prohibits Courts from decreeing suits against the certified purchaser by one who alleges that the purchase was made on behalf of himself.

It is not however necessary to base the decision of this case on such a ground.

Section 314 only prohibits suits in which it is an essential part of the plaintiff's case to show that the purchase was *benami* for him. Though he cannot file such a suit, the real owner may remain in possession and defend his possession if attacked by others including the *benamidar*. It is open to him to lease the properties and to sue the lessee for the recovery of them. In the latter case, the lessee would not be allowed to set up the title of the *benamidar* and if any 3rd party has been allowed by him to enter on the property, he would be in the same position as the lessee under whom he entered.

So considered, the present suit is sustainable.

*Per Raman Tampi, J.*—Section 314 cannot apply to the case of a purchase made by any one in a representative capacity. For, in the nature of things, judicial persons who are capable of acquiring property cannot make purchases except through agents or representatives, and it is not to be supposed that the Legislature intended to exclude them altogether from the category of purchasers in execution of decrees. By parity of reasoning, where the Karanavan of a Tarwad or the Kartha of a Mitakshara family becomes a certified purchaser, it is open to the Tarwad or family, as the case may be, to claim the property so purchased, despite the fact that the auction-purchaser's name alone is mentioned in the certificate of sale.

This view has been elaborated and its application extended to cases where a junior member claims a share of properties which were found to have been purchased *benami* by a stranger on behalf of such member's family with money supplied to the certified purchaser for that purpose.

Adopting this principle, the 1st defendant's objection to the maintainability of this suit must be repelled.

In this case, the 1st defendant is not a mere *benamidar* purchaser. He was *benamidar* when he took the debt-bond, when he sued on it and obtained a decree and when he subsequently executed it. Till that stage, he was bound in law to account for the money which was the plaintiffs'. In execution, it was open to him to realise the money otherwise than by purchasing the property. Had he so realised the decree debt, the plaintiffs would undoubtedly have been entitled to demand it from him.

If as a certified purchaser the 1st defendant can rely on Section 314, his liability as *benamidar* decree-holder still remains unaffected and he therefore is bound to pay the plaintiffs the decree-debt, or, in other words, he must surrender the property which he purchased in execution of the decree.

So considered, Section 314 is no bar to the suit.— **14 T. L. J.,** *493.*

**9.** Section 314 does not cover the case of an agent purchasing on behalf of his principal.

If the principal can ordinarily act through his agent in transactions involving important and valuable interests, and claim for

*Distribution of assets.*

Proceeds of execution sale to be rateably distributed among decree-holders.

59. (1) Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realisation, shall be rateably distributed among all such persons :

Provided as follows :—

(*a*) Where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not be entitled to share in any surplus arising from such sale ;

(*b*) Where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold ;

---

himself the benefit of his agent's acts without at the same time disclaiming the liabilities that he may be saddled with by reason of such acts, it does not stand to reason to say that the principal cannot purchase a property in court-sale through his agent. "If the plaintiff does not seek relief merely on the ground that the certified purchaser was a name-lender but relied upon a certain state of facts as establishing certain kinds of legal relations between himself and the certified purchaser which entitles him to rely on those relations as involving and creating effectual legal claims in favour of the plaintiff over the property purchased, he could rely on such facts and circumstances in support of his legal claims."—

**42 T. L. R.,** *58*
(=**15 T. L. J.,** *167*).

**10.** See also—

Or. XXI, r. 69.—
**30 T. L. R.,** *254*
(=**5 T. L. J.,** *90*).
„ r. 92.—**20 T. L. R.,** *151*.

---

Sec. 59 [= S. 292 = *S. 73*]

I. The corresponding Section in Regulation II of 1065 was as follows :—

"292. *Proceeds of execution-sale to be divided rateably among decree-holders.*—Whenever assets are realised by sale or otherwise in execution of a decree and more persons than one have, prior to the realisation, applied to the Court by which such assets are held for execution of decrees for money against the same judgment debtor, and have not obtained satisfaction

(c) Where any immovable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale;

secondly, in discharging the amount due under the decree;

thirdly, in discharging the interest and principal monies due on subsequent incumbrances (if any); and,

fourthly, rateably among the holders of decrees for the payment of money against the judgment-debtor, who have, prior to the sale of the property, applied to the Court, which passed the decree ordering such sale, for execution of such decrees, and have not obtained satisfaction thereof.

(2) Where all or any of the assets liable to be rateably distributed under this Section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

(3) Nothing in this Section affects any right of Our Government.

---

thereof, the assets, after deducting the costs of realisation, shall be divided rateably among all such persons:

Provided as follows:—

(a) when any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not as such be entitled to share in any surplus arising from such sale:

(b) when any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the assent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same right against the proceeds of the sale as he had against the property sold;

(c) when immovable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of the sale shall be applied—

first, in defraying the expenses of the sale;

secondly, in discharging the interest and principal money due on the incumbrance;

thirdly, in discharging the interest and principal moneys due on subsequent incumbrances (if any): and

fourthly, rateably among the holders of decrees for money against the judgment-debtor, who have, prior to the sale of the said property, applied to the Court which made the decree ordering such sale for

execution of such decrees, and have not obtained satisfaction thereof.

If all or any of such assets be paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

Nothing in this Section affects any right of the Government."

II. 1. "The object of the Section is to expedite and cheapen the execution of decrees against the same person by adjusting the claims of rival decree-holders without the necessity for separate proceedings." (Statement of Objects and Reasons, 1901 amending Bill).— *India Gazette dated 21-12-1901, Pt. V.*

2. "The object of the Section is two-fold. The first object is to prevent unnecessary multiplicity of execution proceedings, to obviate, in a case where there are many decree-holders, each competent to execute his decree by attachment and sale of a particular property, the necessity of each and every one *separately* attaching and *separately* selling that property. The other object is to secure an equitable administration of the property by placing all the decree-holders upon the same footing and making the property *rateably* divisible among them instead of allowing one to exclude all the others merely because he happened to be the first who had attached and sold the property."— *I. L. R., 23 All. 106.*

### Case Law.

1. A prior sale in execution of a decree must prevail against a subsequent one ; and although there may be several attachments on a property, the sale in pursuance of any one of them puts an end to all the attachments, and the sale proceeds which occupy the place held by the property before sale are distributed among the several attaching creditors according to their priorities.— **8 T. L. R.**, *119.*

Ref.—22 T. L. R., 147.

2. No appeal lies against an order rejecting the claim of one of several creditors to share in the distribution of assets realized in execution of a decree. The remedy is by a suit.— **9 T. L. R. App.**, *45.*

3. The plaintiff being the first attaching creditor, he was, under the law in force at the date of sale, entitled to be paid first. (F B.).— **11 T. L. R.**, *13.*

4. The term "decree-holder" in Section 308 of the Civil Procedure Code [ = Or. XXI, r. 87] is not limited to the decree-holder who instituted the execution proceedings and took out the process for sale, but may include a decree-holder who is entitled to come in and share in the sale proceeds under Section 292 of the Code.— **14 T. L. R. App.**, *37.*

5. For the purposes of Section 292, assets can be said to be realised only when the whole amount of the sale proceeds is paid into Court.

An application for rateable distribution made to a Court, having at the time no jurisdiction to entertain such application, must be deemed to be one renewed from day to day till it is finally disposed of ; and if before finally disposing of the application, the Court acquires jurisdiction in the matter it can treat the application as valid, and order rateable distribution in compliance with its terms.

The counter-petitioner's application was no doubt presented to a Court that had no jurisdiction at the time of presentation. The Munsiff could have rejected or returned it on the ground of want of jurisdiction. But it was retained on the Munsiff's file.— **2 T. L. J.**, *97.*

6. Assets are realised within the meaning of Section 292 when the proceeds of the sale of movable property are paid by the auction-purchasers to the Amin who conducts the sale, even though the Amin pays them into Court only on a subsequent date. Payment to an Officer of the Court is tantamount to a realisation by Court.

An application for rateable distribution made to a Court having at the time no jurisdiction to entertain the same and pending on its file must be deemed to be renewed from day to day until finally disposed of; and if before its final disposal, the Court acquires jurisdiction in the matter, the application can be treated as having been validly made and rateable distribution ordered in compliance therewith.

An attachment before judgment is not a substitute for an execution application. "It is impossible without specific language justifying it to create a fiction that an attachment before judgment is equivalent to an application for execution of a decree. Section 490 [which corresponds to Section 469 of the Travancore Code—Or. XXXVI, r. 11] which gives validity and effect to the attachment before judgment even after decree for certain purposes does not give rise to the implication that the attachment was made on constructive application for execution of a decree that had not been passed. There is no magic in the word "re-attach" to be found in Section 490. The attachment before judgment is a fact. It does not die with the decree, and all that the Section provides is that when there is a subsisting attachment it is unnecessary to make a second attachment. The Section does not make the application to execute the decree a second application to execute it, because it says re-attachment is unnecessary. The right to rateable distribution is conferred upon every decree-holder who has applied for execution whether the relief claimed by him is the arrest of the judgment-debtor or the attachment and sale of any property or the sale of property already attached before judgment. The subsisting attachment before judgment has its use in invalidating alienations by the judgment-debtor and dispensing with the need of a further attachment before sale without necessitating the fiction after a decree is passed that there was a pre-existing application for execution. We must therefore regard Section 490 as in no way giving countenance to the view that an attachment before judgment presupposes an application for execution." (8 M. L. T. 226).

The amount which the petitioners had spent in bringing the attached property to Court must be deducted from the sale proceeds and paid to him, and the balance only should be distributed rateably.—

**2 T. L. J.**, *100.*

**7.** *Per Krishnan Nair, C. J.*—No revision lies under Section 568, C. P. C. [new Section 89], where another remedy is provided for in law; and a remedy by way of a suit being provided for in the case of orders under Section 292, no revision lies against such orders.

Where an order of a subordinate Court is declared by the law to be final or conclusive, though in its nature provisional, as subject to displacement by the decree in a separate suit, no revision lies against such orders. The same principle applies to orders under Section 292, which also provides for a remedy by a fresh suit to the aggrieved party, though the word "final" or "conclusive" is not used in the Section.

*Per Muttunayagom Pillai, J.*—If in passing orders under Section 292, a lower Court has refused to exercise the jurisdiction vested in it by law or, has committed any irregularity in procedure which has produced error or defect in the decision of the case on the merits, it is competent to this Court to interfere with the orders in the exercise of its revisional jurisdiction; but it will not interfere, merely because the decision of the Court below is erroneous in law or on the merits, as such errors are best remedied by a separate suit.—

**2 T. L. J.**, *282.*

Ref.—28 T. L. R., 209
(= 3 T. L. R., 169).
9 T. L. J., 237.
Fol.—31 T. L. R., 94.

**8.** In pursuance of an attachment made in execution of a decree obtained by A in the Padmanabhapuram Munsiff's Court, some immovable property was sold by the

Munsiff and purchased by the decree-holder. B, a decree-holder in the District Court of Nagercoil had attached the self-same property in execution of his decree. On learning of the sale proceedings in the Munsiff's Court, B petitioned the Munsiff to stay confirmation of the sale till further orders were obtained by him from the District Court.

*Held.*—Inasmuch as B was not entitled to come in and share in the rateable distribution of assets under Section 292, Civil Procedure Code, he was not the "decree-holder" within the meaning of Section 308 [=Or. XXI, r. 87] of the Code, nor was he a 'person whose immovable property has been sold' and he had, therefore, no *locus standi* to make an application under that Section.— **28 T. L. R.,** *143* (=**3 T. L. J.,** *110*).

**9.** The plaintiff and the defendant had each of them obtained a decree against one M, and placed an attachment on M's properties in execution of their decrees. On sale, the plaintiff's application for a rateable share in the assets realised by sale was rejected, and the whole of the money was received by the defendant. On plaintiff's suing for a share, the defendant contended, *inter alia*, that the suit was barred by limitation as it was brought more than a year after the application was rejected, and that the plaintiff's application for execution not having been pending at the time of realisation of assets, he was not entitled to demand rateable distribution.

*Held* (Overruling the contention).—(1) The suit was governed by Article 47 [= Article 50] of the Limitation Regulation, and not by Article 9 [= Article 10] or Article 7 [= Article 8]. The suit was not barred.

(2) The application for execution having been for attachment of properties and for rateable distribution, the striking off of the application was a ministerial, and not a judicial act. It must therefore be regarded as pending on the date of realisation of assets.— **3 T. L. J.,** *260*.

**10.** No appeal lies from an order passed under Section 292, C. P. C.

The object of the Legislature in introducing Section 292 into the Code is manifestly to place all judgment-creditors on the same footing in the administration by the Court of their debtor's estate, provided that they had taken the precaution of invoking the aid of the Court by applying for *execution of their decrees in any of the modes prescribed by the Code.*

To satisfy the terms of Section 292, there need not necessarily have been an attachment of the judgment-debtor's property prior to the realisation of assets. It is enough if a decree-holder has applied to the Court for the execution of his decree for money against the judgment-debtor as provided in the Section.

*Obiter.*—If, in passing the order under Section 292, the lower Court refused to exercise jurisdiction vested in it by law or has committed any irregularity in procedure which has led to its passing a wrong order it is competent to the High Court to interfere with such order in revision.— **31 T. L. R.,** *94*.

Ref.—43 T. L. R., 416
[=17 T. L. J., 506].

**11.** A decree which directs the sale of the hypothecated properties in default of payment of money is a decree for money, whether there is in it a direction to pay personally or not.— **33 T. L. R.,** *197* (=**7 T. L. J.,** *367*).

Fol.—37 T. L. R., 3.
18 T. L. J., 140.

**12.** If A holds a decree against two persons X and Y and B holds a decree against one of them X, in so far as the decrees are both decrees against X, they are decrees against the same judgment-debtor, under Section 292.

If the claims of the rival attaching creditors be complicated and cannot be resolved

by a summary enquiry and the necessary materials to establish the relative positions of those creditors be absent, the Court can direct the rival decree-holders to establish their respective rights to the amount in Court by instituting suits.

Section 292 relates to procedure only and it does not interfere with substantive rights or the maintenance of a suit, notwithstanding that a party may not have availed himself of its facilities.

The general rule is that the attaching creditors are entitled to receive the money in execution proceedings upon an equitable administration of the property as laid down in Section 292. This Section is a provision for expediting and cheapening the execution of decrees by adjusting the claims of rival decree-holders without the necessity for separate proceedings.

No appeal lies from an order by which the rival decree-holders are directed to establish their rights by suits. In the case, the appeal petition was treated as a civil revision petition.— **10 T. L. J.,** ***275.***

**13.** While the creditors of a firm have a prior claim on the partnership estate, they may come upon the separate property in competition with the separate creditors for payment *pari passu* of so much of the partnership debt as the partnership estate is insufficient to satisfy.—**37 T L. R.,** ***178***
**(=11 T. L. J.,** ***78*****).**

**14.** When money in the custody of a Court is attached, and the attaching Court and the custody Court are the same, the amount can be held to be realised in execution only when there has been an order by the Court for transfer of the money to the credit of the attaching creditor's suit. Where there is no such realisation and where the rival decree-holders apply to the Court for execution of their respective decrees, Section 292 applies.

An order passed in a dispute between rival decree-holders cannot be treated as one falling under Section 238 [new Section 40], and no appeal therefore lies against the order at the instance of either decree-holder.— **37 T. L. R.,** ***305***
**(= 11 T. L. J.,** ***343*****).**

Ref.—15 T. L. J., 312.

**15.** The "date of realisation" is not the date of the confirmation of sale, but the date when the auction amount is fully paid into Court.— **13 T. L. J.,** ***438.***

**16.** For claiming rateable distribution by a decree-holder, his execution petition need not have been pending at the time of the realisation of the assets, if the conditions specifically mentioned in Section 292 had all been satisfied by him.

The conditions a decree-holder should fulfil before he could claim rateable distribution are :—"(*a*) The decree-holder should have applied for execution of the decree to the Court which holds the assets realised. (*b*) Such application should have been made prior to the realisation of the assets. (*c*) The assets must have been realised by sale or otherwise in execution of the decree. (*d*) The attaching creditors as well as the decree-holder claiming to participate in the assets should be holders of decrees for payment of money. (*e*) Such decrees should have been obtained against the same judgment-debtor." (11 C. L. J., 69).—
**43 T. L. R.,** ***416***
**(=17 T. L. J.,** ***506*****).**

**17.** The executing Court has no power to enter into and adjudicate on the question of the *bona fides* of the different decrees in which applications have been made for rateable distribution.

There is no absolute rule that the High Court cannot, under any circumstances, interfere with orders passed under Section 292. Such orders are revisable where the lower Court has exercised or refused to exercise a jurisdiction vested in it by law or has committed any irregularity in procedure which has produced error or defect in the decision of the case on the merits (F. B.).— **42 T. L. R.,** ***22***
**(= 17 T. L. J.,** ***566*****).**

*Resistance to execution.*

Resistance to execution.

**60.** Where the Court is satisfied that the holder of a decree for the possession of immovable property or that the purchaser of immovable property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or some person on his behalf and that such resistance or obstruction was without any just cause, the Court may, at the instance of the decree-holder or purchaser, order the judgment-debtor or such other person to be detained in the civil prison for a term which may extend to thirty days and may further direct that the decree-holder or purchaser be put into possession of the property.

---

**18.** See also—

Sec. 2 (2).— **11 T. L. R.,** *161.*
" 41.— **13 T. L. R.,** *211.*
" 55.— **18 T. L. J.,** *1291.*
" 56.— **15 T. L. J.,** *364.*

**Sec. 60** [ = Secs. 318 & 319 = *S. 74* ]

I. The corresponding Sections of Regulation II of 1065 were as follow :—

"318. *Procedure in case of obstruction by judgment-debtor or at his instigation.*—If the Court is satisfied that the obstruction or resistance was occasioned by the judgment-debtor or by some person at his instigation, the Court shall inquire into the matter of the complaint and pass such order as it thinks fit."

"319. *Procedure when obstruction continues.*—If the Court is satisfied that the resistance or obstruction was without any just cause, and that the complainant is still resisted or obstructed in obtaining possession of the property by the judgment-debtor or some other person at his instigation, the Court may, at the instance of the decree-holder and without prejudice to any penalty to which such judgment-debtor or other person may be liable under the Penal Code or any other law for such resistance or obstruction, commit the judgment-debtor or such other person to jail for a term which may extend to thirty days, and direct that the decree-holder be put into possession of the property."

II. See Order XXI, Rules 94—100.

**Case Law.**

**1.** A Civil Court has no power under Section 318 of the Civil Procedure Code to determine, as between the judgment-creditor and a third party obstructing the execution of the decree, important questions on the merits which are wholly unconnected with and cannot be affected by the fact that the obstruction was made at the instance of the decree-debtor.

X who obtained a decree against Y was resisted by T and B in its execution for delivery of property. X moved the Court under Section 317, Civil Procedure Code, [=Or. XXI, r. 94] and the service of summons issued on his application to T and B was accepted by T alone on behalf of B also. T appeared and opposed the application of X, but his objection was overruled and the delivery of the property ordered. T then

## PART III.

## Incidental Proceedings.

### *Commissions.*

Power of Court to issue commissions.

61. Subject to such conditions and limitations as may be prescribed, the Court may issue a commission—

(*a*) to examine any person;
(*b*) to make a local investigation;
(*c*) to examine or adjust accounts; or
(*d*) to make a partition.

Letter of request.

62. In lieu of issuing a commission, the Court may issue a letter of request to examine a witness residing at any place not within Travancore.

---

brought a regular suit to set aside that order and that too was dismissed by the District Munsiff on the ground that his remedy was by appeal and not by a fresh suit. B then on that very date filed a suit for the cancellation of the decree obtained by X as well as the claim order passed in his favour. The Munsiff dismissed the suit as in his opinion it was not maintainable, but the District Judge on appeal took a contrary view and remanded the case to be tried *de novo*.

*Held.*—The District Judge was right, as it was under Section 319 and not under Section 320 [=Or. XXI, r. 96], that the Munsiff dealt with and decided the original application of X regarding the resistance and as B was really no party to the proceedings taken on that application.—
**17 T. L. R. App.**, *55*.

**2.** The execution Court is under the express provisions of the Civil Procedure Code empowered either to determine the claim of an objector under Section 320 [= Or. XXI, r. 96] or dismiss it under certain circumstances without an investigation on the merits (Section 319), and whenever the Court has proceeded under Section 319, the claimant is entitled to have his remedy secured by an appeal against the order of dismissal or to have his claim of right or title judicially determined by means of a regular suit.— **18 T. L. R.**, *17*.

**3.** A was obstructed in obtaining delivery by T who is the judgment-debtor's brother. The lower Courts rejected the petition of T on the ground that the obstruction was made at the instigation of the judgment-debtor.

*Held.*—No appeal lay against an order passed under Section 318 rejecting the petition of T on the ground that the obstruction was occasioned at the instigation of judgment-debtor.— **18 T. L. R.**, *166*.

**Sec. 61** [ = „ = *S. 75* ]

The general powers of Courts in regard to commissions are summarised in this Section. For the detailed provisions and Case Law, see Or. XXVI.

**Sec. 62** [ = „ = *S. 77*]

63. The provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by—

Commissions issued by foreign Courts.

(a) Courts situate within the limits of British India and established or continued by the authority of His Majesty or of the Governor-General in Council, or

(b) Courts situate in any part of the British Empire other than British India, or

(c) Courts of any foreign country for the time being in alliance with His Majesty.

## PART IV.

### Suits in Particular Cases.

*Suits by or against the Government or Public Officers in their official capacity.*

64. Suits by or against Our Government shall be instituted by or against the Dewan of Travancore.

Suits by or against Government.

[*Explanation.*—Suits by or against the Sreepadam Palace shall be treated as suits by or against Our Government, for the purposes of this Code.]

65. No suit shall be instituted against the Dewan of Travancore, or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of three months next after notice in writing has been, in the case of the Dewan, delivered to or left at the office of the Dewan, and in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

Notice.

---

**Sec. 63** [= S. 376 = *S. 78*]

**Sec. 64** [= S. 401 = *S. 79* (1)]

I. Section 401 of Regulation II of 1065 had no Explanation appended to it. Regulation II of 1070 enacted the following Section:—"7. Suits, appeals and applications by or against the Sreepadom Palace shall be treated as suits, appeals and applications by or against Government." The Explanation to the new Section 64 has been inserted by Section 4 of Regulation III of 1101.

II. See Order XXVII as to the procedure in suits by or against Government.

### Case Law.

See Sec. 14.—**5 T. L. J.**, *351.*

---

**Sec. 65** [ = S. 409 = *S. 80*]

I. Section 409 of Regulation II of 1065 was as follows :—

"409. No suit shall be instituted......... in respect of an act purporting to be done by him in his official capacity...stating the cause of action and the name and place of abode of the intending plaintiff...; and the plaint must contain a statement...or left.

II. The changes made are that the words "any act" have been substituted for the words "an act", and the words "by such public officer" for the words "by him." The latter is to make it clear that "the qualification in respect of an act purporting to be done by him in his official capacity' does not relate to the Dewan as well as to a public officer. So, where a suit is proposed to be instituted against the Dewan, notice to him should be given in all cases, whether the act in respect of which the suit is to be brought purports to be done by him in his official capacity or not.

III. In the British Indian Code, the period of notice is two months. In Section 409 of the old Regulation, the period was three months and it is retained in the present Section 65. In substituting three months for two months in the old Section (409), the Select Committee said :—"An extension appears desirable in the interests of Government and of public officers. To arrange for the defence of suits against them necessarily involves departmental references and nothing short of three months can be considered adequate for the purpose."

### Case Law.

**1.** Where the Court orders, during the progress of a suit that the Sirkar should be joined as a defendant, it is not competent to the Sirkar to object to its inclusion on the ground that the 3 months' notice required by Section 409 of the Civil Procedure Code has not been given.

Section 409 has no application to cases where the Court orders, during the progress of a suit, the inclusion of the Sirkar as a defendant, as a necessary party.

The suit was not instituted against the Dewan; but the Court, at the first hearing of the suit, ordered the Dewan to be made a defendant in the exercise of its discretion under Section 28 [ = Or. I, r. 10 (2) ]. Sections 409 and 28 read and construed together seem clearly to allow operation to the former, subject to the provision of the latter which gives a wide discretion to the Court. To construe otherwise would be to limit the exercise of the discretion vested in Courts by Section 28 and to render it impossible to the Sirkar to intervene as a party to any suit.— **8 T. L. R.**, *122.*

Fol.—17 T. L. R., 168.
1 S. D., 273.
Dist.—1 S. D., 37.
Ref.—2 S. D., 266.

**2.** The three months' notice prescribed by Section 409 must be given to the Sirkar only in suits instituted against the Sirkar; but where the Sirkar was added as a party under Section 28 [ = Or. I, r. 10 (2) ] of the C. P. C., no such notice is necessary.— **17 T. L. R.**, *168.*

**3.** When a suit for cancellation of a Revenue sale filed in a Munsiff's Court was returned for presentation to the District Court (on the ground that the Sirkar was a necessary party) without making the Sirkar a necessary party and when the same was filed making the Sirkar also as a party and without notice to the Sirkar under Section 409 C. P. C. :

*Held.*—(1) The suit is not maintainable. Section 409 has no application only where the Court in the exercise of its powers under Section 28, C. P. C., [ = Or. I, r. 10 (2) ] adds the Government as a party.

(2) The Munsiff should have made the Sirkar a party and then returned the plaint, since the element which takes away his jurisdiction is the existence of the Sirkar as

a party. Until the Sirkar is put on the record as a party, the Munsiff has jurisdiction, and hence, he should have, before returning the plaint, formally made the Sirkar a defendant.

The act of the plaintiff who did not only not appeal against the Munsiff's order returning the plaint for want of jurisdiction, but submitted to it and presented the plaint with the Sirkar added as first defendant amounted to his institution of the suit, and consequently Section 409 did apply.—

**1 S. D.**, *37.*

**4.** When under the Court's order the Sirkar was added as a party, no notice to the Sirkar is necessary.— **1 S. D.**, *270.*

**5.** The Sirkar is not entitled to the two months' notice prescribed by Section 409, when it has been added as a party at the instance of the Court, the Section being applicable only to original suits *instituted* against Government.— **1 S. D.**, *273.*

**6.** Suit against the Sirkar to raise a revenue attachment placed on plaint properties. The notice issued by plaintiff to the Sirkar under Section 409, Civil Procedure Code, insisted upon the latter releasing the properties from attachment and declared that if the demand was not complied with, a suit against the Sirkar would follow. The lower Court holding that the notice was a conditional one rejected the plaint.

*Held.*—The notice was sufficiently explicit and it fulfilled the requirements of Section 409.— **28 T. L. R.**, *236*
(**=3 T. L. J.**, *204*).

**7.** Certain moneys (Rs. 8,000 odd) in the possession of 3rd plaintiff was seized by Government as belonging to one V. D. from whom arrears of revenue were due on account of an Abkari farm. Out of the said amount, 3rd plaintiff claimed Rs. 2,000 as belonging to him, and 2nd plaintiff Rs. 6,000 as belonging to her and her mother, 1st plaintiff. The Tahsildar on investigation found Rs. 2,000 belonged to 3rd plaintiff, and released the attachment in respect of that amount. Third plaintiff then gave notice to Sirkar through his Vakil, under Section 409, C. P. C., claiming the whole amount, Rs. 8,000 odd, as his. The suit was then instituted by the three plaintiffs alleging that the amount belonged to 1st and 2nd plaintiffs. The defendant, Sirkar, contended that the suit was bad for want of notice under Section 409, C. P. C., in regard to the claim of plaintiffs 1 and 2. Plaintiffs relied on the notice given by 3rd plaintiff as sufficient for the maintainability of the suit.

*Held.*—Section 409 required that the notice should contain the name and place of abode of the intending plaintiff and the relief claimed, and as in the case neither the name and place of abode of plaintiffs 1 and 2, nor the relief they claimed as against the Sirkar was mentioned in the notice by 3rd plaintiff, and as such notice was sent only on his behalf, it was not a notice which complied with the provisions of Section 409. The suit was therefore bad for want of notice.

"The object of sending a notice under Section 409 already referred to, namely, that of enabling the Dewan to settle, if he thinks it necessary to do so, the disputed claim with the intending plaintiffs, will be completely frustrated, if it be maintained that a notice which does not contain their names and places of abode is sufficient. The Dewan cannot very well be expected to speculate or ascertain by enquiry who the possible plaintiffs might be. Having regard to the express provisions of Section 409, we cannot hold that the notice which was given on behalf of the 3rd plaintiff alone, fulfils the requirements of the statute, so as to enable the 1st and 2nd plaintiffs to maintain this suit."

[The word "shall" in the Section evidently indicates that the direction contained in the Section is mandatory, rendering the giving of notice a condition precedent to the institution of the suit] (F. B.).—

**29 T. L. R.**, *195*
(**=4 T. L. J.**, *21*).

8. As in the notice issued to the Dewan by the plaintiff under Section 409, no reference was made to the relief regarding the repayment of the money levied, the notice was defective. The plaintiff was, therefore, not entitled to seek that relief in the suit.— **29 T. L. R.,** *325.*

9. The three requisites for a valid notice according to Section 409 are :—

(1) Cause of action, (2) name and residence, and (3) relief sought.

The object of the notice required by Section 409 is to give the defendant an opportunity of settling the claim, if so advised without litigation. A notice is sufficient if it substantially fulfils its object in informing the parties concerned generally of the nature of the suit intended to be filed. In a matter like this, what the Court has to ascertain is whether the object of the Legislature has been substantially and effectively carried out.

Where the plaintiff demanded in his notice a certain amount as compensation, but in the plaint claimed declaration of title and recovery of possession of property, or in the alternative a lesser amount as compensation :

*Held.*—There was valid notice as regards compensation, but not as regards declaration of title and recovery of possession (F. B.).— **10 T. L. J.,** *60.*

Ref.—41 T. L. R., 232
(= 15 T. L. J., 237).
44 T. L. R., 32
(= 18 T. L. J., 471).
19 T. L. J., 541.

10. A suit was instituted against the Dewan of Travancore for setting aside the decision of the special officer appointed under the old Boundary Regulation (Regulation III of 1058) for settling certain disputes that arose between the plaintiff and the Sirkar. It was dismissed for want of notice to the Dewan of Travancore under Section 409 C. P. C. On appeal :

*Held (Per Cheriyan and Sesha Aiyar, JJ.)*—Plaintiff's failure to issue the notice was not fatal to the entertainment of the suit, because it would be impossible for the plaintiff to give the requisite notice of three months under Section 409 C. P. C. and bring the suit within two months from the date of the decision of the special officer, as required by Section 26 of the Boundary Regulation.

In order to take the case out of the rule requiring the issue of notice, it must be shown that, humanly speaking, it was impossible for the plaintiff to give a notice and comply with the provisions of the law as required in the Civil Procedure Code and then to launch his suit.

There is another way of looking at the question. The Boundary Regulation is a special enactment, complete in itself so far as it goes, and enacted for the decision of certain classes of disputes in an expeditious manner. Therefore, the Legislature cannot be presumed to have intended that Section 26 of the Boundary Regulation should be controlled by Section 409 of the C. P. C. In a sense the appeal by means of a regular suit as contemplated by Section 26 of the Boundary Regulation is only a continuation of the enquiry before the special officer.

*Per Palpu Pillai, J.*—The matter is governed entirely by Section 26 of the Boundary Regulation which treats a suit of this kind as an appeal to the Civil Court from the decision of the Settlement officer and requires it to be filed within two months from the date thereof and therefore the provisions of Section 409 C. P. C. cannot apply (F. B.).— **37 T. L. R.,** *1*
**(= 10 T. L. J.,** *452***).**

Ref.—18 T. L. J., 52.

11. The suit was instituted by the plaintiff against the Sirkar for the recovery of Fs. 8697 and odd as damages for the defendant's wrongful refusal to issue a pass for transport of certain timber felled by him from certain lands belonging to him. The notice given to the Sirkar under Section

409, C. P. C., contained a statement of the cause of action on which the suit was based. Paragraph 2 of the notice referred to the inaction of the Forest Department in not examining the timber felled by the plaintiff and issuing a pass therefor. It also stated that the plaintiff had already sustained thereby a loss of over Rs. 150 and stood to lose a further sum of Rs. 1000 in future. In paragraph 4 of the notice, it was also stated that a pass should be issued to him at once so as to save him from further loss. Failing these, the plaintiff prayed that he may be given sanction to file a suit against the Sirkar for 'these reliefs.'

The defendant contended, among other things, that no proper notice of suit had been given under Section 409, C. P. C.

*Held.*—The object of a notice under Section 409, C. P. C., has been held to be to give the Government an opportunity of investigating the alleged cause of complaint and making amends if it thinks fit.

As regards the form of the notice, it would be sufficient if it substantially fulfils its object of informing the party concerned generally of the nature of the suit to be filed. "All that is required is, that it shall be sufficiently clear and explicit to show the ground of complaint, the cause of action. That must not be left in doubt or framed so as to mislead."

Judged by these principles, the notice given in the case is a sufficient compliance with the requisites of Section 409, C. P. C. The words "these reliefs" in the notice are wide enough to embrace the relief for damages claimed in the suit. The prayer for sanction is only an euphemistic form of expression intimating that, in the event of non-compliance with the notice a suit would be filed.— **41 T. L. R.,** *232* (= **15 T. L. J.,** *237*).

Ref.—19 T. L. J., 541.

**12.** The provisions of Section 65 are imperative in their nature, the object thereof being to allow the Sirkar, if so advised, to settle the claim without litigation. When objection is taken to the sufficiency or absence of notice, it is incumbent on the plaintiff to make out that the provisions of this Section have been substantially complied with. The insistence of a specific statement that a notice, as referred to above, has been issued under the Section itself would strongly support the above view.— **44 T. L. R.,** *32* (= **18 T. L. J.,** *471*).

**13.** The object of a notice under Section 48 of the Municipal Regulation and Section 65 of the C. P. C. of 1100 is to enable the defendant concerned to enquire into the complaint and make amends if considered proper. A provision made with this object cannot avail the other parties to the suit, nor can its aid be invoked by them in cases where the party for whose benefit it is intended does not come forward, or expressly waives it, or conducts himself in such a way as to estop him from putting it forward as a defence.

As regards the right of ordinary Civil Courts of the land to deal with matters where special tribunals have been constituted to deal with them, the rule seems to be that where a discretion which has to be exercised by such tribunals in the disposal of such matters has, as a matter of fact, been exercised by them, the Civil Courts cannot interfere with the same. They cannot substitute their own judgments for those of the tribunal. The ordinary Civil Courts cannot constitute themselves appellate authorities over such tribunals, nor is interference permissible by way of review. Even in cases where the statute makes it imperative on the part of the special tribunal to set forth the reasons for its decision, the above courses cannot be adopted. The circumstance that the ordinary rules of procedure laid down with respect to Civil Courts have not been adopted by the special tribunal will not also justify an interference.

If, however, the tribunal in question refused to exercise the jurisdiction vested in it under the statute or where the express

66. In a suit instituted against a public officer in respect of any act purporting to be done by him in his official capacity—

Exemption from arrest and personal appearance.

(a) the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a decree, and,

(b) where the court is satisfied that the defendant cannot absent himself from his duty without detriment to the public service, it shall exempt him from appearing in person.

---

rules of procedure laid down in the statute have not been followed, or where it has not been acting in good faith and listened to both sides, its decision may be considered to be no legal adjudication at all, and consequently Civil Courts can properly take cognizance of such matters.

A reading of the rules under the Municipal Regulation as a whole would indicate that a finality was intended to be attached to the decisions of the Revising Authority. In the matter of the interpretation of the Rules, the powers of the Revising Authority are unfettered. It is not for the Civil Court to decide whether interpretation of a particular rule by the Revising Authority is right or wrong. Even if it is erroneous, the Civil Courts have no jurisdiction to interfere with it.—**44 T. L. R.**, *465* (=**18 T. L. J.**, *1296*).

14. The notice of three months which a plaintiff has to give under Section 65 before instituting any suit against the Dewan of Travancore is a notice within the meaning of Section 15, Sub-section (2), of the Limitation Regulation.— **19 T. L. J.**, *201*.

15. It is sufficient if the notice under Section 409 substantially fulfils its object of informing the party concerned generally of the nature of the suit intended to be filed.

The provision is restrictive of the ordinary common law right of the subject, and, as such, in cases of doubt, should be liberally construed in favour of the subject.— **19 T. L. J.**, *541*.

16. Under Section 14 of the Limitation Regulation, in computing the period of limitation for a suit to recover money due under a periodically recurring right, the period of pendency of a suit for the same relief, dismissed for want of notice to Government under Section 409, C. P. C., has to be excluded.— **45 T. L. R.**, *103*.

17. See also—

Or. I, r. 8.—**31 T. L. R.**, *245* (=**6 T. L. J.**, *1*).

---

**Sec. 66** [= Ss. 410 & 413 = *S. 81*].

I. The corresponding Sections of Regulation II of 1065 are as follow :—

"410. No warrant of arrest shall be issued in such suit without the consent in writing of the High Court.

"413. In a suit against a public officer in respect of such act as aforesaid, the Court shall exempt the defendant from appearing in person when he satisfies the Court that he cannot absent himself from his duty without detriment to the public service."

II. In Clause (b), the expression "where the Court is satisfied" is substituted "to remove the misapprehension that, at present, the public officer is bound personally to

[66-A. (1) Suits by or against the Government of His Majesty the King, Emperor of India, shall be instituted by or against the Secretary of State for India in Council.

Suits by or against the Government of His Majesty.

(2) All pleadings signed or verified, and all appearances, applications and acts made or done, in any such suits by any officer or officers authorised in that behalf by the law for the time being in force, with respect to similar suits in British India, shall be deemed valid in the same manner and to the same extent as they are in British India].

[66-B. (1) Any Indian Prince in alliance with his Majesty the King, Emperor of India, may sue and shall be sued in Our Courts in the name of his Minister or other officer, provided that such Minister or other officer has been recognised by a Notification of Our Government published in Our Government Gazeett as the representative of such Prince.

Suits by or against Indian Princes.

(2) The recognition made by the aforesaid Notification may be made with retrospective effect from such date as may be mentioned in the Notification.

(3) Our Government may, by like Notification, cancel any such Notification but not so as to invalidate any proceedings held previous to such cancellation.

*Explanation.*—Nothing in the Rules in the First Schedule relating to suits by or against minors and persons of unsound mind or such Rules as may hereafter be passed relating to the same matter under the provisions of Part IX of this Code shall apply to any such Prince suing or being sued under the provisions of this Section.]

---

satisfy the Court of his inability to attend." (Indian Select Committee on the 1901 Bill).

*India Gazette dated 21-3-1903, Pt. V.*

III. In regard to the British Indian Code, Section 81 (which is reproduced as Section 66 of the new Regulation), the Indian Special Committee say in their Notes on Clauses :—"The Committee think that the same measure of protection should be afforded to the defendant where Government undertakes the defence as where the Government makes no application for the purpose, and it appears to the Committee that the proper protection should be that the defendant should be exempt from mesne arrest and his property from mesne attachment."

IV. See Order XXVII, Rule 8.

**Secs. 66-A & 66-B.**

I. These two Sections were inserted by Section 5 of Regulation III of 1101.

67. (1) Where the decree is against the Dewan of Travancore or against a public officer in respect of any such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of Our Government.

Execution of decree.

(2) Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such report.

---

II. Section 66-A re-enacts the provisions of the Proclamation issued under date the 1st Mithunam 1088/14th June 1913, which ran as follows :—

"Whereas it is expedient to define how the Government of His Majesty the King Emperor of India should sue and be sued in the Courts of Travancore ; We are hereby pleased to enact that the said Government shall sue, and be sued in Travancore, in the name of the Secretary of State for India in Council, and that all pleadings, signed or verified, and all appearances, applications and acts, in any such suits, made or done by any officer or officers, empowered in that behalf with respect to similar suits in the Courts of British India, shall be deemed valid ; and We are further pleased to enact that all such pleadings, appearances, applications and acts, made in the Courts of Travancore prior to the date hereof, shall have the same effect as if this Proclamation was in force at that time."

III. (1) Section 66-B corresponds to Section 6 of Regulation II of 1070, which was as follows :—

"8. The Ruler of any Native State under the suzerainty of Her Majesty the Queen-Empress of India may sue and shall be sued in Our Courts, in the name of his Minister or other Officer, provided that such Minister or other Officer has been recognized by a Notification of Our Government published in Our Government Gazette as the representative of such Ruler.

The recognition made by the aforesaid Notification may have a retrospective effect from such date as may be mentioned in such Notification.

Our Government may, by like Notification, cancel any Notification made under the last two paragraphs of this Section, but not so as to invalidate any proceedings held previous to such cancellation."

In regard to the above Section, it was observed as follows in the Statement of Objects and Reasons :—"4. It being necessary to remove the doubts felt as to the legality, under the present Code of Civil Procedure, of the institution and defence by the Dewan of Cochin, of the suits relating to the property of the Cochin Sirkar, situated in Travancore, Section 5 is drafted on the lines of Section 434 of the British Code as it now stands."

(2) Section 434 of the Indian Code of 1882, referred to above, corresponds to Section 87 of the present Indian Code which is as follows :—

"87. A Sovereign Prince or Ruling Chief may sue and shall be sued in the name of his State :

Provided that in giving the consent referred to in the foregoing Section the Governor-General in Council or the Local Government, as the case may be, may direct that any such Prince or Chief shall be sued in the name of an agent or in any other name."

**Case Law.**

See Or. III, r. 2.— **18 T. L. R.**, *65*.

**Sec. 67** [ = S. 414 = *S. 82*]

No decree against the Government of His Majesty or Indian Prince to be executed without Government sanction.

[67-A. No decree passed against the Government of His Majesty the King, Emperor of India, or against any Indian Prince in alliance with His Majesty or against any officer of such Government or Prince in his capacity as representative of such Government or Prince shall be executed without the previous sanction of Our Government.

Such decrees to be executed only on immovable property.

67-B. Subject to the provisions of Section 67-A, such decree as is mentioned in that Section shall be executed only against the immovable property, if any, of such Government or Prince situate within Travancore.]

*Interpleader.*

Where interpleader-suit may be instituted.

68. Where two or more persons claim adversely to one another the same debt, sum of money or other property, movable or immovable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself :

Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted.

---

**Secs. 67-A & 67-B.**

I. These two Sections were inserted by Section 6 of Regulation III of 1101.

II. 1. The Sections correspond to Sections 9 and 10 of Regulation II of 1070, which were as follow :-

"9. No decree passed against the Ruler of a Native State under the suzerainty of Her Majesty the Queen-Empress of India or against his Minister or Officer in the representative capacity of such Minister or Officer, shall be executed without the previous sanction of Our Government.

"10. Subject to the provisions of Section 9 of this Regulation, the decree passed against the Ruler of a Native State under the suzerainty of Her Majesty the Queen-Empress of India or against his Minister or Officer in the representative capacity of such Minister or Officer shall be executed *only* on the immovable property of such Ruler situated in Travancore."

In the Statement of Objects and Reasons, it was stated that these Sections, "based on Clause 3 of Section 433 of the British Indian Code, not only guard against hasty execution of decrees which may happen to be

adverse to foreign States, but also facilitate the recovery of sums due by means of correspondence between the Ministers of Travancore and of the foreign States concerned, without resort to coercive measures which, for obvious reasons, ought to be avoided."

2. Section 433 of the Indian Code of 1882 referred to above corresponds to 86 of the present Indian Code, and Clause (3) of the latter runs as follows:—"(3) No such Prince, Chief, Ambassador or Envoy shall be arrested under this Code, and, except with the consent of the Governor-General in Council certified as aforesaid, no decree shall be executed against the property of any such Prince, Chief, Ambassador or Envoy."

---

Sec. 68 [ = S. 449 = S. 88 = En. Or. 57, rr. 1-2 ]

I. The corresponding Section in Regulation II of 1065 was as follows:—

"449. *When interpleader suit may be instituted.*—When two or more persons claim adversely to one another the same payment or property from another person, whose only interest therein is that of a mere stakeholder, and who is ready to render it to the right owner, such stakeholder may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to whom the payment or property should be made or delivered and, of obtaining indemnity for himself:

Provided that, if any suit is pending in which the rights of all parties can properly be decided, the stakeholder shall not institute a suit of interpleader."

II. "In defining the scope of this provision, we have referred to debts and sums of money and other movable property as an indication of the ordinary cases arising under Order LVII, rule 1. At the same time, we find that the procedure here provided has been adopted with great benefit in relation to immovable property held by the Court of Wards in the character of a stakeholder. We accordingly propose to render it clear that the provision is not confined, as has often been supposed, to movable property only." (Indian Select Committee on the 1901 Bill).— *India Gazette dated 21-3-1903, Pt. V.*

III. See Order XXXIV, *Infra.*

IV. Rules 1 and 2 of Order LVII of the Rules of the Supreme Court, 1883, as amended, are as follow:—

"1. *In what cases relief granted.*—Relief by way of interpleader may be granted,—

(a) Where a person seeking relief (in this Order called the applicant) is under liability for any debt, money, goods, or chattels, for or in respect of which he is, or expects to be, sued by two or more parties (in this Order called the claimants) making adverse claims thereto:

(b) Where the applicant is a sheriff or other officer charged with the execution of process by or under the authority of the High Court and claim is made to any money, goods or chattels taken or intended to be taken in execution under any process, or to the proceeds or value of any such goods or chattels by any person other than the person against whom the process is issued.

"2. *Court to be satisfied on certain points.*—The applicant must satisfy the Court or a Judge by affidavit or otherwise—

(a) That the applicant claims no interest in the subject-matter in dispute, other than for charges or costs; and

(b) That the applicant does not collude with any of the claimants; and

(c) That the applicant, except where he is a sheriff or other officer charged with the execution of process by or under the authority of the High Court, who has seized goods and who has withdrawn from possession in consequence of the execution creditor admitting the claim of the claimant under

## PART V.

## Special Proceedings.

### *Arbitration.*

Arbitration.

69. Save in so far as is otherwise provided for by any law for the time being in force, all references to arbitration whether by an order in a suit or otherwise, and all proceedings thereunder, shall be governed in the manner prescribed.

---

Rule 16 of this Order, is willing to pay or transfer the subject-matter into Court, or to dispose of it as the Court or a Judge may direct."

**Case Law.**

One B. P., who was an accountant under the Sirkar till his death, had deposited 1400 fs. with the latter as security for his office. On his death, the amount of the deposit was claimed by the first defendant as assignee from B. P.'s Karanavan, and by the second and third defendants as members of B. P.'s Tarwad. The Sirkar instituted an interpleader suit depositing into Court a sum of Rs. 414 and odd only. The plaint alleged that the balance of B. P.'s deposit was due to the Sirkar on account of the deceased's liabilities, and that the 1st defendant on the one hand and defendants 2 and 3 on the other claimed the amount due to the deceased adversely to each other. The defendants, while setting up a rival claim to the deposit, contended that the amount tendered by the Sirkar was not the correct amount and that the interpleader suit was not sustainable.

*Held.*—The suit was clearly not sustainable as an interpleader suit, as the position of the Sirkar, far from being that of a mere stake-holder, was that of one who had an interest in the subject-matter of the suit to the extent of B. P.'s liabilities, and as the language of the Sections 449 to 452 of the Civil Procedure Code [see Or. XXXIV, rr. 1, 2 and 4] showed that the plaintiff was bound to bring into Court "the thing claimed" by the adverse claimants and not what the plaintiff considered was the amount that might be justly found due to them. *

If there was no dispute between the contending claimants on the one hand and the plaintiff depository on the other, in regard to the amount of B. P.'s liabilities, then it may undoubtedly be said that, with respect to any balance that may remain out of the deposit amount, the Sirkar occupied the position of a mere stake-holder.

"The meaning of interpleader is that the holder of a fund which is claimed by different individuals should not be exposed to harassing litigation; he himself claiming no interest in the fund, and the other persons claiming it not proceeding to litigation with a view to the settlement of their claims. It is so called because it is a bill by a stake-holder, who cannot get the claimants to settle the question between themselves, and who apprehending that he may be exposed to attack from one or the other of them comes to this Court to subject them to interpleader. If they were allowed to proceed against him separately, of course it would be vexatious. The first thing essential to interpleader is that the plaintiff should be a mere stake-holder, and have no interest of his own in the fund. * It is the invariable practice that when there is any question raised by the plaintiffs as to the amount, which is the subject of interpleader, such question prevents the right of interpleader."

"Interpleader is for the purpose of preventing the plaintiff from being sued by two persons at once for the same thing."—

**28 T. L. R., 4**
**(=2 T. L. J., 451).**

*Special Case.*

Power to state case for opinion of Court.

70. Where any persons agree in writing to state a case for the opinion of the Court, then the Court shall try and determine the same in the manner prescribed.

*Suits relating to Public Matters.*

Public nuisances.

71. (1) In the case of a public nuisance, the Dewan or two or more persons having obtained the consent in writing of the Dewan, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.

(2) Nothing in this Section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

Public charities.

72. In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Dewan, or two or more persons having an interest in the trust and, having obtained the consent in writing of the Dewan, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree—

---

**Sec. 69** [= „ = *S. 89 (1)*]

1. See Order XXXIX and Appendix G.
2. See Order XXIII, Rule 3.

**Sec. 70** [= „ = *S. 90*]

See Order XXXV.

**Sec. 71** [= „ = *S. 91*]

I. 1. "This Section is new. In cases of public nuisance, no one can maintain a suit to abate it, or to seek for any other remedy, without his being in some way especially aggrieved. This Section enables Government or two or more persons with their permission to maintain a suit without establishing any special grievance."—

2. See Objects and Reasons, Page 13 *Supra*.

II. The Indian Special Committee observed :—"We have inserted a Clause to enable actions for public nuisances to be brought, with the consent of the Advocate General, irrespective of special damage. It has been represented to us that such a power is needed and we concur in that view."

III. See Section 266 of the Penal Code for the definition of public nuisance.

(a) removing any trustee;
(b) appointing a new trustee;
(c) vesting any property in a trustee;
(d) directing accounts and inquiries;
(e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust;
(f) authorising the whole or any part of the trust-property to be let, sold, mortgaged or exchanged;
(g) settling a scheme; or
(h) granting such further or other relief as the nature of the case may require.

---

Sec. 72 [= S. 511 = *S. 92 (1)*]

I. 1. The corresponding Section 511 of Regulation II of 1065 was as follows:—

"511. *When suits relating to public charities may be brought.*—In case of any alleged breach of any express or constructive trust created for public, charitable or religious purposes, or whenever the direction of the Court is deemed necessary for the administration of any such trust, the Dewan acting *ex officio*, or two or more persons having an interest in the trust and having obtained the consent in writing of the Dewan, may institute a suit in the District Court within the local limits of whose Civil jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree—

(a) appointing new trustees under the trust;

(b) vesting any property in the trustees under the trust;

(c) declaring the proportions in which its objects are entitled;

(d) authorizing the whole or any part of its property to be let, sold, mortgaged or exchanged;

(e) settling a scheme for its management;

or granting such further or other relief as the nature of the case may require.

The powers conferred by this Section on the Dewan may be, with the previous sanction of the Government, exercised also by the Division Peishkar or by such officer as the Government may appoint in this behalf."

2. The above Section was inserted by the Select Committee. They said:—

"The corresponding Section in the British Code is 539. In the Bill as now introduced this was omitted for the following reason: —Its adoption would affect the numerous Pagodas and charities which are now independent of Government control. It may be viewed as a sweeping change and may create consternation in the minds of the people concerned. Cases of the kind contemplated may well be left as hitherto to be dealt with under the general provisions of the Code.

"The majority of the members of the Committee differ from this view. The High Court in the original Bill drafted by them have entered this provision and considered it expedient in the circumstances of this country. The fact that numerous Pagodas and charities exist here makes it all the more necessary that their interests should be duly looked after. The Government

ought to be the proper guardian of such interests. A great deal of laxity is known to prevail for want of due and legitimate checks against abuses in this direction. It appears, therefore, necessary that the Dewan should be vested with power to sanction the institution of suits of this class."

II. The difference between this Section (72) and the corresponding British Indian Section is the addition in the latter of the words "or in any other Court empowered in that behalf by the Local Government" after the words "original jurisdiction." Thus Courts subordinate to District Courts may be invested by Government with power to try cases under this Section.

III. 1. The words "public purposes of a charitable or religious nature" have been substituted for the words "public charitable or religious purposes" "to obviate recurrence of the frequent misconception that 'public' is merely co-ordinate with 'charitable' or 'religious'." (Indian Select Committee on the 1901 Bill).— *India Gazette dated 21-3-1903, Pt. V.*

2. *Whether contentious or not.*—"There has been considerable difference of opinion as to whether Section 539 extends to contentious proceedings. If it does not, then its efficacy is materially impaired, and it is proposed to make it clear that it does apply to contentious suits for the removal of trustees and the recovery of assets from the hands of third parties." (Statement of Objects and Reasons, 1901 amending Bill).— *India Gazette dated 21-12-1901, Pt. V.*

See I. L. R., 20 Cal., 810 and 14 Mad., 186.

IV. "The real object of the special provisions of this Section seems to us to be clear. Persons interested in any trust were, if they could *all* join, always competent to maintain a suit against any trustee for his removal for breach of trust; but where the joining of *all* of them was inconvenient or impracticable, it was considered desirable that some of them might sue without joining the others, provided they obtained the consent of the Advocate-General or of the Collector of the District; and this condition was imposed to prevent an indefinite number of reckless and harassing suits being brought against trustees by different persons interested in the trust." (24 Cal., 418: 33 Cal., 789).

### Case Law.

1. A, the junior Swamiar of a Matom, sued to remove B, the senior Swamiar, from the management thereof, and to set aside alienations of immovable property made by the latter in favour of C. B and C pleaded that A had no right to sue.

*Held.*—(1) The Matom being a Brahminical and religious Institution, questions raised in connection with its concern must be decided with reference either to the general principles of Hindu Law, or to any special usage or custom by which its affairs had been hitherto administered.

(2) B could at best be only a trustee; as such, he had no beneficial interest in the property committed to his management. He could not, therefore, encumber or dispose of it; and hence, A was competent to question the alienation made by B and to seek his removal from management.

It is entirely in the interests of religious and charitable institutions that the Law confers on any person who may have some interest, however remote, in *their well-being* the power of claiming redress in respect of breaches of trust. The institution is *the real complainant* and the nominal plaintiff is merely the human medium of communication.— **4 T. L. R.,** *61.*

Fol.—11 T. L. R., 102.

2. The management of certain property of a Devaswom vested in the family of A and B. A, the head of the family, assigned this property without any reference to the right of the Devaswom, to R, for his maintenance under an agreement. B a junior

member of the family sued to set aside the assignment and to declare the right of the Devaswom to the property.

*Held.*—(1) Inasmuch as A (though the senior member of the family) was not the manager of the Devaswom, he was incompetent to make the assignment.

(2) Even if A was such a manager, he would be incompetent to give away the property to C, without any obligation to contribute to the expenses of the Devaswom and A could not, therefore, alienate the property.— **5 T. L. R.,** *27.*

**3.** The Sirkar has the power of interfering in the affairs of public institutions under the control of hereditary trustees, in cases of gross neglect of duty or misconduct, and of assuming the management of such institutions, without recourse to law, if that course is necessary in the interests of such institutions; but such assumption of management will not prejudice the rights of the aggrieved parties to obtain redress for wrongs suffered by them, by an appeal to the judicial tribunals in due course of law (F.B.).— **8 T. L. R.,** *1.*

**4.** Suit by the representatives of one Church for recovery of another Church and its premises together with the articles used at divine worship therein. Plaintiff's claim rested on a purchase from the members of a family who are alleged to have taken a prominent part in building and endowing the Church sold.

*Held.*—Materials used in religious worship are, by all systems of law, "*extra commercium.*"

A religious endowment, whether Hindu, Christian or Mahomedan, is inalienable. (F. B.)— **10 T. L. R.,** *12.*

**5.** (1) A person suing in respect of, or objecting to, alienations of trust property belonging to a religious or charitable institution, must have an interest in the institution (Section 511 of the Civil Procedure Code).

(2) A Christian, though a Venpattom lessee (tenant-at-will) of a Devaswom, could not in any sense be treated as a person having an interest in a Hindu Devaswom to entitle him to impugn before a Court an alienation of property belonging to the institution, by the trustee thereof.— **11 T. L. R.,** *102.*

Ref.—13 T. L. J., 486.

**6.** (1) An attachment of property forming a chartiable endowment, for satisfaction of a private decree-debt of the trustees charged on the property, was invalid.

(2) The fact that the property has been treated as the trustee's private property, cannot alter its nature and render it alienable for private purposes of the trustee.

That may be a good ground for the removal of the trustee from his office—whether he is a hereditary trustee or otherwise —at the suit of any person or community interested in the upkeep of the charity. Otherwise, trustee of a charitable institution would be permitted to be materially benefited by his own misfeasance or malfeasance and the object of the institution altogether defeated.— **11 T. L. R.,** *190.*

Dist.—5 T. L. J., 405.

**7.** An Urallan of a Devaswom being incompetent, as a trustee thereof, to enter into contractual relations with the institution cannot take a permanent lease of property belonging to it.

A perpetual lease is an alienation. The fiduciary relationship existing between the institution and the Urallan does not admit of contractual relations between them, for the promisor and the promisee are virtually and legally one person, and the self-interest of the trustee would, as a rule, act prejudicially to the interests of the beneficiary.— **12 T. L. R.,** *33.*

Fol.—15 T. L. R., 149.

**8.** A trustee of a religious institution, unlike other trustees, may maintain a suit

for the benefit of the beneficiaries without joining them as parties to the suit.

The suit for which sanction is necessary under Section 511 of the Civil Procedure Code must be one against a trustee of the institution and not against trespassers, and it must also be for one of the reliefs specified in Clauses (*a*) to (*e*) of the Section.

Where there is an unbroken course of the profession of one faith and adherence to its doctrine and ritual for many years (in this case 50) the worship according to the later profession of the congregation forms the proper object of the trust, whatever may have been the old belief and doctrines (F. B.).— **14 T. L. R.**, *83*.

Fol.—23 T. L. R., 171.
Ref.—30 T. L. R., 91
[=4 T. L. J., 305].
3 S. D., 24.

**9.** A family arrangement to perform a religious ceremony from the income derived from a particular property does not amount to a trust binding on strangers.— **14 T. L. R.**, *96*.

**10.** Where the donor of certain properties set apart some of them for common purposes of the family and for the performance of mass for the departed souls of his family until an endowment shall be made to the Church by the purchase of separate property for the purpose for a specified sum out of the properties so set apart, and the heir of the donee alienated the same before making any such purchase as required by the donor :

*Held.*—As a religious trust was validly created on the properties so set apart, they were liable for the performance of the trust and therefore, their alienation was not valid even though the trust was not fully executed.— **14 T. L. R.**, *171*.

**11.** Every endowment made to and registered in the name of a Devaswom is in the eye of law regarded as trust property, though no trust may be expressly declared or created by the grantor. A trust property cannot be recovered from a person unconnected with the trust, who has taken possession of it and held it in his own right, repudiating the trust for over 12 years.— **14 T. L. R.**, *225*.

**12.** A District Judge granted an injunction under Section 472 of the Civil Procedure Code [ = Or. XXXVII, r. 2] in reversal of the order passed by a District Munsiff. On application for revision of the Judge's order :

*Held.*—As the suit in question was for declaration of a trust the purposes and object of which were not definite enough to warrant a decree for specific performance, the District Judge was wrong in granting the injunction.— **14 T. L. R. App.**, *23*.

**13.** An Urallan or trustee of a temple cannot purchase property belonging to a temple.

The laws do not provide for an application being made to the Courts to sanction such alienations; and they could not be recognised when made out of Court on the general principle that a trustee cannot deal with the trust property for his own benefit. Section 511, C. P. C., does not authorise the Dewan to interfere in such a case.— **15 T. L. R.**, *149*.

**14.** The right of management of a religious and charitable endowment is *res extra commercium* inalienable and indivisible in the absence of any power of appointment vested in the trustees by the terms of the trust or the custom and usage of the institution.

As the plaintiff sued as heir and not merely as one interested, it was unnecessary to consider the question of the bar under Section 511.— **20 T. L. R.**, *246*.

**15.** The Government has a Melkoima right in all public religious and charitable institutions.— **22 T. L. R.**, *54*.

**16.** A trustee does not commit a breach of trust if he borrows money from the tenant of the trust property provided the

trustee does not make it a source of illicit gain to himself at the expense of the trust estate.

A trustee cannot be allowed to convert what was in fact a loan into a payment of arrears of rent.— 1 S. D., *23.*

**17.** The management of a temple generally depends upon the terms on which it was founded or on rules framed by the founder. In the absence of any such writing or trust deed or deed of management, it depends upon the usage and practice of each particular institution.

[The suit was by the Uralan of the Devaswom to recover the keys of the treasury room from the defendants the hereditary Kysthanakars or to compel them to open the treasury room and allow plaintiff to take the money secured therein.]

The Full Bench observed : - "As the long and protracted litigation between the parties has been the cause of much ill-feeling between the parties, owing to the absence of any scheme formulated either by the founder or by the Courts in any one of the previous suits, regulating the respective duties and rights of plaintiff and defendants, and as it is desirable in the interests of the institution, that its officers and managers should exercise their duties and rights smoothly without coming in conflict with each other, we have, in the exercise of our inherent judicial powers, herein below formulated a scheme of management in regard to its temporal affairs as far as the materials before us warrant us in so doing."—

1 S. D., *44.*

**18.** When a person entrusts property to another for the purpose of feeding 16 Brahmins every Dwadasi day, then that becomes a public charitable trust, and every person of the Brahmin community becomes interested in the due performance of the trust. Section 511, C. P. C., is only an enabling Section and therefore, a suit brought by a person having an interest in a public charitable trust can be maintained even without Government sanction. Section 511, while framed in the public interests, does not deprive persons who have in themselves the right to sue, of that right, nor is any sanction necessary in their case.—

3 S. D., *24.*

**19.** The first plaintiff claiming as head of the Umayorubhagom Matom at Sreevaikuntam to be entitled to appoint, with the concurrence of the desciples of the Umayorubhagom Matom at Therur, suitable persons to the headship of the latter Matom which is said to be subordinate to the Sreevaikuntom Matom, sued, in conjunction with others said to be desciples of the Therur Matom and members of the Vellala and Chetty communities in Travancore and Cochin who acknowledged the head of the Therur Matom as their spiritual Guru, (1) for declaration that the first defendant was not properly appointed to the headship of the Therur Matom and was not competent to be its head, (2) for his removal in case he be found to have been properly appointed, (3) for a declaration that Therur Matom was subordinate to Sreevaikuntom Matom, and (4) for recovery from second defendant of certain properties improperly alienated by first defendant. The defendants denying the rights claimed by plaintiffs contended that the suit was bad for misjoinder of parties and causes of action and for want of the Dewan's sanction under Section 511 C. P. C. The Court below upholding the preliminary contentions of the defendants dismissed the suit. On appeal by plaintiffs :

*Held.*—The suit was not bad for misjoinder of parties or causes of action, and even if it were so, Sections 27 and 42, C. P. C., [ = Or. I, r. 9 & Or. 2, r. 7] did not justify dismissal of the suit.

As the Code of Civil Procedure was *prima facie* a statute laying down procedure, and substantive right and rights of suit which may be shown to exist independently of the Code could not, in the absence of express words, be held to have been abrogated by its provisions.

Section 511 of the Code was not prohibitory or mandatory, but only cumulative and enabling and had not done away with or affected rights of suit which existed prior to its enactment.

Therefore, if individuals, either in their own right or as representing a community in a suit properly framed under Section 26 C. P. C., [ = Or. I, r. 8 ] could have sued before the passing of the Code, such right of suit was unaffected by Section 511.

The right of worshippers to sue for rectification of the maladministration of a temple existed prior to, and independent of, Section 511 of the Code.

The plaintiffs' communities had the right to maintain the suit, and were properly represented by the plaintiffs in the suit.

The community of the Vellalas and Chetties of Travancore and Cochin were sufficiently well defined to permit some of their number to sue on behalf of the rest with the consent of the Court under Section 26, C. P. C. (F. B.).—**30 T. L. R.**, *91* (=**4 T. L. J.**, *305*).

Fol.—35 T. L. R., 133 (=9 T. L. J., 134).

**20.** When all the trustees of an Endowment are jointly liable to it, it is competent for any one of them to exclusively represent it and to enforce its rights against some of the defaulting trustees alone.

It is not necessary for the plaintiff in such suits to invest himself with a right to sue on behalf of the institution by obtaining the consent in writing of the Dewan.

No limitation applies to a suit brought by a trustee against his co-trustees to make them account for the monies they have received in the course of their management and for recovery of the trust funds found misappropriated by them. Section 10 of the Limitation Regulation (old) will apply to such suits and exempt the claim from the time limits prescribed by the Regulation. (F. B.).— **35 T. L. R.**, *133* (=**9 T. L. J.**, *134*).

**21.** Though one or two persons might have worked for the establishment of the trust, if it was established with the funds contributed by a community, the members of that community will be regarded as the founders. As such they are interested in the administration of the trust.

Negligence in the administration of the trust, keeping no proper accounts, and appropriating moneys belonging to the trust without any excuse or justification made it clear that the continuance of the trustee was a menace to the trust itself. Even a hereditary trustee is liable to be removed if his continuance in office is likely to endanger the interest of the institution.

Where no copy of the sanction under Section 511 was produced but only the notice issued to the plaintiffs by the Taluk authorities in which the said sanction was communicated to them :

*Held.*—In the circumstances of the case, this was a sufficient compliance with the requirements of law.— **10 T. L. J.**, *79*.

**22.** The general rule is that a trustee shall have no allowance for his trouble and loss of time beyond the terms of the trust. But to this general rule there are well recognised exceptions; and among these is the case where the trustee at the time of accepting the trust stipulates for an allowance or remuneration for his services and the allowance is freely made, and it is for the benefit of the estate to get his services. (F. B.).— **38 T. L. R.**, *137* ( = **12 T. L. J.**, *137*).

**23.** When several persons join in founding a charitable institution, the trusteeship would under the law vest in all of them jointly, unless some one has been selected as sole trustee. If the founders were divested of their trusteeship, there ought to be clear and cogent evidence of it. The fact that the trust was managed in rotation by the persons who happened to be the eldest members in the family, from time to time,

Regulation III of 1079.

73. Save as provided by the Religious Endowments Regulation, III of 1079, no suit claiming any of the reliefs specified in Section 72 shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that Section.

## PART VI.

### Supplemental Proceedings.

Supplemental proceedings.

74. In order to prevent the ends of justice from being defeated, the Court may, if it is so prescribed,—

(a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security, commit him to the civil prison ;

---

is not sufficient to show that the other founders ceased to be trustees. It is usual for such trusts to be managed by one of the trustees. The eldest member in actual management may be regarded as the acting trustee ; but he holds the office nevertheless on behalf of all his co-trustees. Even during the turn of each co-trustee, all the co-trustees are entitled, and in fact are bound, to act jointly in matters outside the ordinary routine of management. When the administration of a trust is vested in co-trustees, they all form as it were but one collective trustee, and must execute the duties of their office in their joint capacity.

The powers of management of a trustee are not higher than those of the manager of an infant heir, and he cannot alienate trust-property unless in case of urgent need and for the benefit of the trust.

It is clear law that where there are several trustees all of them should be impleaded in suits relating to the trust.—

**13 T. L. J.**, *486.*

**24.** There is no rule that a scheme decree is in no circumstances executable, and that for enforcing any provision of the scheme, a separate suit is the only course open. Whether it is executable or not depends on the intention of the decree. While generally a scheme decree is declaratory, specific parts thereof may contemplate execution and can be executed.—

**18 T. L. J.**, *1249.*

---

Sec. 73 [ = „ = *S. 92 (2)*]

I. 1. In the original Bill, this Section was, as in the British Indian Code, a Subsection of the previous Section. It was the Select Committee that made it a separate Section.

2. The Indian Special Committee who inserted this provision in the Code, said :—"As a doubt has been expressed in at least one reported decision whether Section 539 is or is not mandatory, the Committee have thought it desirable, in order to settle this question, to introduce Sub-clause (2)."

II. *Section omitted.*—After Section 92 in the Indian Code, there is a Section (93) which provides for the powers conferred by

(*b*) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property ;

(*c*) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold ;

(*d*) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property ;

(*e*) make such other interlocutory orders as may appear to the Court to be just and convenient.

Compensation for obtaining arrest, attachment or injunction on insufficient grounds.

75. (1) Where in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding Section,—

(*a*) it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds, or

(*b*) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable ground for instituting the same,

the defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him :

---

Sections 91 and 92 on the Advocate General (=Secs. 71—73) being exercised, outside the Presidency Towns, with the previous sanction of the Local Government, also by the Collector or by such Officer as the Local Government may appoint in this behalf.

The original Bill provided similarly for the exercise of the powers of the Dewan by the Dewan Peishkar or other Officer appointed by the Government. But the Select Committee deleted the Section.

Sec. 74 [ = „ = *S. 94* ]

I. *Clauses* (*a*) *and* (*b*)—Arrest and attachment before judgment.—See Order XXXVI.

*Clauses* (*c*) *and* (*e*)—Temporary injunctions and interlocutory orders.—See Order XXXVII.

*Clause* (*d*)—Appointment of Receiver. See Order XXXVIII and Section 44.

II. For case law, see under the orders mentioned.

Provided that a Court shall not award, under this Section, an amount exceeding the limits of its pecuniary jurisdiction.

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.

---

**Sec. 75** [ = Ss. 470 & 476 = *S. 95* ]

I. The corresponding Sections of Regulation II of 1065 were as follow:—

"470. *Compensation for obtaining arrest or attachment on insufficient grounds.*—If, in any suit in which an arrest or attachment has been effected, it appears to the Court that such arrest or attachment was applied for on insufficient grounds, or

if the suit of the plaintiff fails, and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him by the arrest or attachment:

Provided that the Court shall not award under this Section a larger amount than it might decree in a suit for compensation.

An award under this Section shall bar any suit for compensation in respect of such arrest or attachment."

"476. *Compensation to defendant for issue of injunction on insufficient grounds.*—If it appears to the Court that an injunction which it has granted was applied for on insufficient grounds, or

if, after the issue of the injunction, the suit is dismissed or judgment is given against the plaintiff by default or otherwise, and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such sum, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him by the issue of the injunction:

Provided that the Court shall not award under this Section a larger amount than it might decree in a suit for compensation.

An award under this Section shall bar any suit for compensation in respect of the issue of the injunction."

II. 1. The first of the Sections quoted above provided for compensation for wrongful arrest and attachment; and the second for compensation for wrongful injunction. The present Section combines both the above old Sections.

2. The words "by its order" have been substituted for the words "in its decree" in Sub-section (1). The award should be embodied in a separate order, which is made appealable by Section 82.

### Case Law.

1. A Court awarding compensation should satisfy itself about the existence of two circumstances, *viz.*, one of the three alternatives enumerated in the first part of Section 78 (Regn. II of 1037) and the want of probable grounds for instituting the suit. [The alternatives were that the attachment was applied for on insufficient grounds, or that the plaintiff's suit was dismissed or that judgment was given against him by default or otherwise.]

The mere dismissal of the suit for default to adduce evidence is not enough to entitle a defendant to compensation.—

*7 T. L. R., 15.*

Fol.—18 T. L. J., 224.

**2.** A suit was instituted by the Adhikaris of a Devaswom to restrain the defendant from performing the duties of Santhi in the Devaswom on the ground of his having been dismissed from the office by the manager of the Devaswom. The District Court allowed the suit, but the High Court on appeal dismissed it with costs. The defendant put in an application in execution in the lower Court to recover the costs of the suit and also damages on account of loss of the remuneration suffered by the defendant by his having been prohibited from performing the duties of Santhi by an order of the Court below after it had passed its decree. The District Court allowed the defendant to recover his costs but refused to consider in execution his claim for damages. On appeal :

*Held.*—The defendant having been deprived of the remuneration for the performance of his duties as Santhi by the enforcement of the decree of the lower Court, he was entitled to be restored to all the benefits of which he was so deprived, when that decree was reversed on appeal.

Section 476 applies to cases where temporary injunctions have been applied for on insufficient grounds and has no application to cases like the present, where the suit itself was to restrain the defendant from performing his duties. The mesne protits or damages recoverable by way of restitution may be considerably more than the sum of Rs. 1,000 which alone could be awarded under Section 476. The defendant was not restrained by a temporary injunction, but by a prohibitory order made in pursuance to the erroneous decree of the primary Court. Section 476 does not apply to the defendant's claim for damages which arose, not by reason of any temporary injunction granted by the trial Court, but because the erroneous decree of the trial Court was reversed by the Appellate Court.

A defendant's right to claim restitution is one which Courts have no discretion to refuse. A decree of reversal by an Appellate Court contains by necessary implication a direction to the Court below to cause restitution to be made of all the benefits of which the successful party in the appeal was deprived by enforcement of the erroneous decree of the Court of first instance.

The fact that the decree of the Appellate Court does not direct restitution is no bar to such restitution being ordered.—

**14 T. L. J.,** *352.*

**3.** Though orders under Section 470 are not made expressly appealable under Section 557 [new Section 82 and Order XLII, Rule 1] as in the case of orders under Section 476, the practice in Travancore appears to have been to allow appeals from orders passed under Section 470.

The amount awarded as compensation under Section 470 should be taken to be a part of the decree, and as Section 512 [new Section 76] provides that an appeal shall lie from a decree or part of a decree, the order awarding compensation is appealable.

**18 T. L. J.,** *224.*

Rel.—18 T. L. J., 640.

**4.** When a matter in controversy has been adjudicated upon and embodied in a decree, it must be treated as a part of the decree and not as an independent order. A distinction has to be drawn between decisions of Court embodied in the decree and cases not so dealt with. Where no compensation has been awarded for wrongful attachment before judgment under Section 470, the refusal to allow any amount on this account need not be embodied in the decree. In such cases, the same will have to be treated as orders independent of the decree, and the appealability or otherwise will then depend upon the same falling within the purview of the various Clauses in Section 557 [= Section 82 and Order XLII, Rule 1]. If they do not so come under such provisions, no appeal will necessarily lie in the nature of the imperative provisions of the above Section. When, however, the award

## PART VII.

### Appeals.

#### *Appeals from Original Decrees.*

Appeal from original decree.

76. (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court.

---

of a particular amount has been incorporated as an integral part of the decree, in pursuance of the express provisions of the statute, it is doubtful whether it would be proper to hold that it is nevertheless not a part of a decree, against which, in the absence of any provisions in the Code to the contrary, a right of appeal is expressly conferred on the aggrieved party under Section 512 [new Section 76] thereof. A reading of Sections 470 and 557 along with Section 476 cannot warrant a denial of this right, especially as Section 512 distinctly lays down that the right of appeal against a part of the decree would exist unless *expressly* provided against by any other provision in the Code or any other law for the time being in force.

Events subsequent to the institution of the suit could be taken into account in granting appropriate reliefs to the plaintiff. In appropriate cases, even if such events had taken place after the decree in the primary Court, the same could be considered and relief granted in appeal on that basis.— **18 T. L. J.**, *640.*

**5.** The express reference to a suit for compensation in Section 75 would indicate that a separate suit would lie for the purpose and that the omission to claim compensation in the suit itself would be perfectly immaterial. The only prohibition laid down is that if the matter had been adjudicated upon in the suit itself by virtue of the provisions above referred to, the questions could not be re-agitated in a separate suit.

In a suit for damages by a plaintiff on account of attachment of plaintiff's outstandings and his arrest before judgment, by the defendant raising fraudulent and malicious pleas, in a prior suit, the absence of proper and reasonable grounds and malice have to be affirmatively made out by the plaintiff. The provisions of Section 75 do not enable one to dispense with the proof of such ingredients, as want of reasonable and probable cause and malice considered essential, ordinarily, in actions for damages.—

**19 T. L. J.**, *731.*

**6.** See also—

Or. XXXVII, r. 1.—

**14 T. L. R. App.**, *50.*

---

**Part VII.**

The Indian Special Committee in their Report observe as follows in regard to the provisions embodied in this Part :—

"11. *Appeals.*—As regards appeals from original decrees we have departed but slightly from the existing Code. We have thought it advisable to give legislative sanction to the view that no appeal shall lie from a consent decree, or as to costs, except by leave of the Court; but the most important change is that incorporated in Clause 97, which renders it obligatory upon a party, who considers himself aggrieved by a preliminary decree, to appeal from that

(2) An appeal may lie from an original decree passed *exparte.*

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

---

decree, at the risk of being precluded from disputing its correctness on an appeal from the final decree. We feel strongly that this is a most useful provision, as tending to that which is most desirable, *viz.*, finality in litigation.

"As regards appeals from appellate decrees, the only substantial departure from the existing Code is the insertion of Clause 103. Experience has shown the desirability of this Clause, the effect of which will be to avoid remands, with their consequent delay and expense.

"As regards appeals from orders a comparison of Clause 104 of the Bill with Section 588 of the existing Code would support a *prima facie* inference that the right of appeal from Orders had been materially curtailed. But this inference is dispelled on looking at Sub-clause (*h*) of Clause 104 which allows an appeal from any Order made under Rules from which an appeal is expressly allowed by Rules. We have carefully gone into the question of the cases in which an appeal should be allowed from these Orders and our conclusion is expressed in the Rules themselves."

[Clauses 97, 103 and 104 referred to are reproduced as Sections 77, 81 and 82 respectively of the Regulation.]

---

**Sec. 76** [= S. 512 = *S. 96* = Jud. Act, 1873, S. 49]

I. The corresponding Section in Regulation II of 1065 was as follows:—

"512. *Appeal to lie from all original decrees, except when expressly prohibited.*— Unless when otherwise expressly provided by this Code or by any other law for the time being in force, an appeal shall lie from the decrees or from any part of the decrees of the Courts exercising original jurisdiction to the Courts authorised to hear appeals from the decisions of those Courts.

An appeal may lie under this Section from an original decree passed *ex parte.*

II. *Sub-section (3).*—**1.** See Note under Order XXIII, Rule 3, under which consent decrees may be passed.

**2.** Section 49 of the judicature Act, 1873, provides that "no order made by the High Court or any Judge thereof, by the consent of parties, or as to costs only, which by law are left to the discretion of the Court, shall be subject to any appeal, except by leave of the Court or Judge making such order."

III. See under Order XL.

**Case Law.**

**1.** The right of a respondent to take objections at the hearing of the appeal to any portion of the decree under appeal is co-extensive with his right to prefer an appeal from the decree itself.— **5 T. L. R.**, *120.*

**2.** (1) Though Section 104 [=Or. I, r. 12] of the Civil Procedure Code (old) allows one or more plaintiffs to appear and act for the other or others of them, the presentation of an appeal by one or more of several appellants for the other or others of them is wholly unsanctioned by law. An appeal must be filed in person or by Vakil or by a recognised agent under the provisions of the Code.

(2) An appeal filed by a party improperly added as such and who has not signed the plaint, is bad for defect of parties.— **7 T. L. R.**, *165.*

**3.** The representative of a party dying after decree and before the expiry of the period allowed for appeal, may present an appeal without previously obtaining permission therefor; and such appeal, when presented, should be registered and proceeded with, the appellant's competency to represent the deceased party being open to be objected to by respondents and to be disposed of by the Court at the hearing of the appeal. If the objection be allowed, the appeal is dismissed. It is only against the dismissal of the appeal that the representative has a right of second appeal. An order refusing a representative to file an appeal is not *per se* appealable.—**9 T. L. R. App.**, *44*.

**4.** An alienation of property which is the subject of a pending litigation, by a party thereto, will not disentitle him to continue as party in the suit and carry on proceedings. Such alienation is not, strictly speaking, an absolute alienation, as its validity depends entirely upon the result of the litigation. The transferor cannot, therefore, be said to have lost all his interest in the litigation. In the case, the transferor was considered to have sufficient interest in the litigation, and on his appeal, the Judge was competent to consider the whole case.—
**10 T. L. R.**, *46*.

**5.** An appeal by defendant against an *ex parte* decree can succeed only by showing that the claim is unsustainable legally or on the evidence adduced.—**11 T. L. R.**, *143*.

**6.** Under Section 516 [=Or. XL, r. 4] of the Civil Procedure Code, one of the several plaintiffs or defendants can prefer an appeal against the whole decree only if the decree appealed against proceeds on any ground common to all such plaintiffs or to all such defendants and not to some of the defendants and the plaintiffs on one side and the other defendants on the other. In other words, a colluding defendant or a defendant supporting the plaintiff's case cannot appeal on behalf of the plaintiff.

"It is not competent to certain defendants appealing and making a non-appealing defendant a respondent between themselves, to open out that portion of the case which as between the plaintiff and the non-appealing defendant, has not been appealed against." (F. B).— **13 T. L. R.**, *93*.

**7.** Where a decree deals only with and decides the disputes between the plaintiffs on one side and defendants as a body on the other and not the disputes between defendants *inter se*;

*Held*,— One defendant cannot appeal against other defendants.

The suit was purely between the plaintiffs and defendants 1 to 3. The 4th and 5th defendants were made parties merely *pro forma*. No relief was claimed against them and none granted by the decree under appeal. In this view, the fifth defendant had no right of appeal. (F. B.).—
**14 T. L. R.**, *1*.

**8.** A suitor shall, on presentation of an appeal, present also the fee payable on it. No appeal shall be filed unless the fee prescribed be paid, and no appeal memorandum which has been presented without the requisite fee shall be valid until the fee is paid. Where an appeal has been received by the Court without any fee having been paid on it through mistake or inadvertance, a Judge may order the fee to be levied, and on the fee being levied, the reception of the appeal shall become valid with retrospective effect.

An appeal memorandum which has been presented without any fee being paid on it must be considered as not legally presented until the fee is paid and the date of presentation must be taken to be the date on which the fee is paid, except in the case provided for in the latter part of Section 17 of the Court fees Regulation.

An appeal memorandum unaccompanied by any fees is not a document of which judicial notice can be taken, except in cases specially provided for by law and the Court

is not bound to give notice to the appellant before rejecting such appeal (F. B.).—
**14 T. L. R.,** *102.*

Dist.—2 T. L. J., 340.
1 S. D., 309.
Overruled.—28 T. L. R., 36
( = 3 T. L. J., 85 ).

**9.** The proceedings in the Appellate Court are but a continuation of the proceedings in the suit and the decree of the Appellate Court must be taken as the decree in the suit.— **14 T. L. R.,** *195.*

Ref.—32 T. L. R., 190
(= 6 T. L. J., 305).
Rel.—17 T. L. J., 229.

**10.** It is not open to an Appellate Court when an appeal is prohibited by law, to enter upon the merits of the case (F. B.).—
**15 T. L. R.,** *47.*

Fol.—14 T. L. J., 452.

**11.** A Kanomdar's mortgagee who has not attorned to the Jenmi is not entitled to raise any contentions regarding the enhancement of rent in an appeal against a decree which on that point was only against the Kanomdar who did not appear to contest the appeal.— **18 T. L. R.,** *161.*

**12.** A suit the value of which was less than Rs. 100 was filed in the Munsiff's Court in 1075, and the appeal to the District Court was filed in Makarom 1077, *i. e.,* after the amending Regulation I of 1077 came into force. It was contended that the procedure in appeal and special appeal should be governed by the amending Regulation and not the old Regulation I of 1057.

*Held.*—The contention was right and, therefore, the special appeal was not maintainable.

A law which merely alters the procedure may with perfect propriety be made applicable to past and future transactions. "No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the Court in which he sues and if an Act of Parliament alters that mode of procedure, he has no other right than to proceed according to the altered mode." "When a new enactment deals with rights of action, unless it is so expressed in the Act, an existing right of action is not taken away. But where the enactment deals with procedure only, unless the contrary is expressed, the enactment applies to all actions whether commenced before or after the passing of the Act."— **18 T. L. R.,** *164.*

Not fol.—25 T. L. R., 170
( = 2 T. L. J., 91).
Fol.—19 T. L. J., 406.

**13.** In a suit for removal of Karanavan certain distant Koottukars who failed to show a *prima facie* case of community of interest in the suit Tarwad were made additional defendants in the suit. In the appeal preferred by them impugning the lower Court's finding against their membership, they offered to pay court fees on the total value of the Tarwad properties.

*Held.*—As no such fees could be levied in appeal from either party, the only course was to leave the question of the rights of the Koottukars for settlement in a separate suit on payment of proper court fees.

To allow at this stage the payment of court fees on the total value of the properties would be inconvenient and irregular—inconvenient inasmuch as after having got the relief for which they brought the suit, the plaintiffs would have now to conduct a suit against another party at their own expense and for a declaration which they never asked for, and irregular inasmuch as the offer is in fact to conduct in appeal a suit of a higher value than in the lower Court to the prejudice of the court fees revenue.—
**18 T. L. R.,** *252.*

Dist.—19 T. L. R., 112.
Ref.—30 T. L. R., 251.
31 T. L. R., 196.
34 T. L. R., 116
( = 8 T. L. J., 218).
19 T. L. J., 195.

14. The value of a suit as found by the District Munsiff's Court determines the jurisdiction of the tribunal to hear the appeal.

Where, therefore, the suit was to redeem a mortgage the amount of which was said to be 97 Rs. and the District Munsiff decreed redemption on payment of Rs. 370 as the amount of the mortgage and Rs. 400 as the value of improvements, the total being Rs. 770 :

*Held.*—Under the amendment made in Section 13 of the Civil Courts Regulation (Section 7 of Regulation I of 1077), the appeal from the decision of the District Munsiff should lie to the High Court direct.—
**19 T. L. R.,** *220.*

Dist.—19 T. L. R., 223.
Fol.—K. P., 558.
Ref.—32 T. L. R., 245
(=6 T. L. J., 407).

15. For determining the forum of appeal against a decree ordering redemption, the value of the suit is the value of improvements as determined by the Munsiff plus the mortgage amount.— **K. P.,** *558.*

Diss.—32 T. L. R., 245
( = 6 T. L. J., 407).

16. The court fees payable in appeal by a defendant who appeals against a decree for redemption and disputes plaintiffs' right to redeem is only on the mortgage amount, and not on the market value of the properties sought to be recovered, provided that the appeal does not relate to other matters (F. B.).—
**25 T. L. R.,** *1*
(= **1 T. L. J.,** *252*).

Ref.—32 T. L. R., 245
( = 6 T. L. J., 407).

17. The right of appeal to a particular tribunal is a vested right and such a right cannot be taken away unless by express provision of law. After a decree has been passed in a suit, the litigant cannot be deprived of his right of appeal by a subsequent enactment unless the latter gives retrospective effect expressly to itself.

It is a well-known principle of interpretation that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested (F. B.).—
**1 T. L. J.,** *100.*

Ref.—25 T. L. R., 170
( = 2 T. L. J., 91).

18. Two defendants, claiming, independently of each other, some of the properties in dispute, put in a joint appeal, valuing their reliefs separately. They paid also court-fees on the costs of the plaintiff, for which each of them had been liable separately.

*Held.*— The joint appeal was not proper, and court-fee need not be paid on costs generally in all cases, unless the decree as to costs is questioned in appeal independently of any other reliefs (F. B.).—
**1 T. L. J.,** *388.*

19. A District Munsiff, whose small cause jurisdiction extended up to Rs. 50, had on his regular file a suit of the value of nearly Rs. 91. Pending suit, Regulation II of 1084 came into force, by Section 13 (2) of which the small cause jurisdiction of the Munsiff was extended to Rs. 100. The Munsiff, thereupon, transferred the suit from his regular file to the small cause file, and disposed of it as a small cause.

*Held* (in revision).—The transformation into a small cause of a suit legally instituted as a regular suit was illegal.

So long as Regulation II of 1084 had not expressly, or by necessary implication, made its provisions retrospective, and in view of the language of Section 7 of the General Clauses Regulation, the enactment that applied to the case was the one in force on the date of institution of suits.

The expression "legal proceedings" in Section 7 of the General Clauses Regulation must be taken to include all proceedings in

the suit from the date of its institution up to its final disposal.

The right of appeal was inherent in every party to a civil suit as from the date on which it was launched, and whoever lost must be taken to have been vested at the time of the suit with the right of appeal.

Such right could not be taken away, except by express enactment of the Legislature and consequently, the Munsiff was not justified in converting the regular suit into a small cause, so as to deprive the unsuccessful party of the right of appeal, which he had at the institution of the suit. (F. B.).

**25 T. L. R.,** *170*
(= **2 T. L. J.,** *91*).

Ref.—18 T. L. J., 726.

**20.** For the purpose of determining the proper Appellate Court in a suit for taking accounts, what is to be looked to, is the value of the original suit, that is to say, the amount or value of the subject-matter of the suit. Such amount or value of the subject-matter of the suit must be taken to be the value assigned by the plaintiff in his plaint and not the value as found by the Court, unless it appears that, either purposely or through gross negligence, the true value of the suit has been altogether misrepresented in the plaint.—**32 T. L. R.,** *97.*

Fol.—32 T. L. R., 245
(=6 T. L. J., 407).

**21.** Suit for 350 Fs. being balance of consideration for the assignment of a mortgage right by plaintiff to defendant. The suit was filed first as a Small Cause suit; but under order of Court, it was refiled as an original suit. The Munsiff gave plaintiff a decree. The District Judge, on appeal, dismissed the suit finding that the whole amount of the consideration had been paid. In second appeal, plaintiff contended that the suit though tried as an original suit, was still a small cause suit, and that though the decision of the Munsiff was valid, no appeal lay to the District Court.

*Held.*—(1) The suit being only for money, and not for specific performance of a contract, was triable as a small cause.

(2) Section 13 of the Civil Courts Regulation merely regulated the procedure to be adopted in the adjudication of certain classes of suits, and did not take away the jurisdiction of the Munsiffs to try them as original causes. Therefore, the decision of the suit by the Munsiff as an orignal cause was valid and operative. The words "shall try" in Section 13 are not conclusive.

(3) That under a strict interpretation of Section 512, C. P. C. and Section 13 of the Civil Courts Regulation, which interpretation was more convenient and conducive to justice, it was the nature of the *trial* and not of the *suit* that decided whether an appeal lay or not. Therefore, in the present case, as the suit, though a small cause, was *tried* as an original suit, the appeal to the District Court was competent.

(4) In spite of the omission of the party to raise the objection to jurisdiction in either of the lower Courts, this Court was bound to hear and consider the objection, as where there is an entire absence of jurisdiction in the lower Courts the objection to it could not be waived by the party, and his failure to take it, could not, therefore, operate to confer jurisdiction.—

**32 T. L. R.,** *38*
(= **6 T. L. J.,** *101*).

**22.** The plaintiff sued for redemption of a mortgage on payment of the mortgage amount—730 Fs. and the value of improvements—1300 Fs. The District Munsiff decreed the suit awarding the defendant 11,354 Fs. as the value of improvements. The plaintiff appealed to the High Court objecting to the award of improvements to the extent of 8135 Fs. and odd. It was contended that the appeal lay to the District Court notwithstanding that the amount objected to was more than 7,000 Fs.

*Held.*—Under Section 4, Clause 8, of the Court Fees Regulation, the subject-matter

of a mortgage suit, (both original and appellate) for purposes of Court fee, is the principal sum secured by the instrument of mortgage; and under Section 2 of the Suits Valuation Regulation, the value in such, among other, cases of the subject-matter for purposes of jurisdiction is the same as the value for purposes of Court fee. Hence, in an appeal against a mortgage-decree which awards a certain amount as value of improvements to the mortgagee, the forum is to be determined with reference to the principal sum secured by the mortgage deed and not with reference to the amount of the value of improvements that is claimed or whose award is disputed, in appeal (F. B.).—

**32 T. L. R.,** *245*
**(=6 T. L. J.,** *407*).

**23.** From the decree in a suit of the value of more than Rs. 1,000, an appeal was preferred by the plaintiff-petitioner to the District Court which set aside the Munsiff's decree and remanded the suit under Section 533 of the Civil Procdure Code for retrial. The Munsiff to whom the suit was remanded declined to try and dispose of the suit as, in his opinion, the judgment of the District Court which had no jurisdiction to entertain the appeal was not a valid judgment.

*Held.*—The course adopted by the District Munsiff was illegal inasmuch as it was not competent to him in the face of the remand order to have declined to try and dispose of the suit. Even though the District Judge acted without jurisdiction in entertaining the appeal, the proper course for the defendants (counter-petitioners) to have taken, was to invoke the revisional jurisdiction of this Court to cancel the appellate proceedings. The Munsiff clearly had no jurisdiction to revise the Judge's order and virtually to set it aside.—**34 T. L. J.,** *293*.

**24.** An appeal in respect of costs only is entertainable when there has been no real exercise of discretion by the lower Court or when a question of principle is involved.—

**35 T. L. R.,** *37*.

Ref.—13 T. L. J., 3.

**25.** The suit was by the foreman of a Chitty against a prized subscriber for recovery of future subscriptions in a lump on the ground that the defendant had defaulted to pay the subscriptions from the 10th drawing. The primary Court allowed the suit holding that the defendant was a defaulter, but the lower Appellate Court dismissed the suit holding that the defendant was not a defaulter. In allowing the defendant's appeal, the lower Appellate Court permitted by its decree the payment into Court by the defendant of each future instalment as it fell due. Accordingly, the defendant paid into Court the amount due for the drawings that had already taken place since the date of suit. The plaintiffs gave credit for that amount and preferred this special appeal for the balance of the plaint amount treating defendant as a defaulter. The defendant contended that the plaintiff having taken advantage of the decree which directed the defendant to pay into Court to the credit of the foreman the amount of each future instalment as it fell due, had thereby precluded himself from appealing against that decree on the footing that the defendant should still be regarded as a defaulter.

*Held.*—The appeal was incompetent, as the appellant could not adopt the order for one purpose and then claim to have it set aside for another purpose. The general principle governing such cases is that a party, who has adopted an order of the Court and acted under it, could not, after he has enjoyed a benefit under the order, contend that it was valid for one purpose and invalid for another.—

**38 T. L. R.,** *281*
**(=12 T. L. J.,** *167*).

**26.** It is a well established principle of law that an appeal in respect of costs only is entertainable when there has been no exercise of discretion, or when a question of principle is involved. Acting on this principle, an Appellate Court ought not to interfere with an order relating to costs, unless the order is arbitrary or perverse on

the face of it, or unless there has been such a gross mis-exercise of judicial discretion as to render interference necessary.— **13 T. L. J.,** *3.*

**27.** Where the interests of the appellants in the subject-matter of the suit are separate and distinct, they cannot be allowed to file one appeal covering their separate interests. Separate appeals ought to have been filed. In the case, the appeal was ordered to be split up into two appeals (F. B.).— **13 T. L. J.,** *354.*

**28.** In an appeal from an *ex parte* decree, it is open to the appellant to take the plea that the evidence on record is not sufficient to sustain the decree.

On an appeal from an *ex parte* decree, there is nothing to preclude the Court from considering whether the *ex parte* decree should not be set aside for the reason that the appellant has been prejudiced by the procedure adopted by the lower Court. And if it comes to that conclusion, the High Court is competent to set aside the decree and order a retrial.

In so doing, the Appellate Court is not confined to the grounds mentioned in Section 108 [=Or. IX, r. 13].—**14 T. L. J.,** *220.*

**29.** A non-contesting defendant may appeal from a decree made against him; but, by so appealing, he is not relegated to the position of a contesting defendant who is entitled to an adjudication on the merits of the controversy between the parties.

In the case, the first and second defendants accepted the validity of the Munsiff's decree against them, but contended that the basis of the decree was unsound so far as it was acted upon by the District Judge. The defence thus raised was one that could be waived and had been waived in the trial Court. It could not therefore be given effect to.— **15 T. L. J.,** *322.*

**30.** The Insolvency Regulation, while vesting the property of the insolvent in the Receiver and while forbidding any suit against the insolvent except with the permission of the Court, does not bar a suit by the insolvent.— **15 T. L. J.,** *373.*

**31.** Objections not specifically taken in the Court of first instance cannot be entertained in appeal.— **15 T. L. J.,** *427.*

**32.** The provision in Section 3 of the Succession Certificate Regulation for the production of a succession certificate is a general statutory provision which applies to all Courts. No Court, whether trial or appellate, seised of a case can pass a decree in plaintiff's favour till the peremptory requirements of Section 3 are complied with.

The omission to raise the objection about the non-production of a succession certificate in the original Court by the defendant does not prevent him from taking the objection in the Appellate Court.

Section 3 of the Regulation does not permit a conditional decree being passed (for example, that a decree may be given subject to the production of a succession certificate before the plaintiff applies for execution). **16 T. L. J.,** *134.*

Ex. & Dist.—17 T. L. J., 28.

**33.** In cases of appeals presented after the expiration of the time prescribed by law, a separate written application for excusing delay is necessary for admission of the same under Section 5 of the Limitation Regulation. The omission to make such application does not, however, affect the competency of the Court to excuse the delay, if an affidavit, not supporting an application, discloses grounds sufficient in the opinion of the Court to enable it to admit the appeal preferred after the expiry of the prescribed period.

The provision contained in Section 7, Clause 4 (*a*) (ii) of the High Court Regulation implies that when the delay in the presentation of an appeal is sought to be excused, the appellant should make an application in that behalf. But the practice of the High Court has been to require an application when an appellant desires to have his delay excused. This rule of practice has become a rule of law. This Rule

is not inconsistent with any statutory provision, but is, on the other hand, conducive to the convenience of the Court and the litigant public. However, the Court may, in appropriate cases, excuse the delay if, by affidavit or otherwise, the appellant satisfies it that he had sufficient grounds for not appealing in time (F. B.).

[ In the Order of Reference to the Full Bench, the question involved is discussed with reference to Section 76, Orders VII, r. 11 ; XIX, rr. 2 and 3 and XXI, r. 86 and Rules 3 and 294 of the Civil Courts Guide].

**43 T. L. R.,** *52* (=**17 T. L. J.,** *1*).

**34.** The admission of an appeal presented out of time is no doubt within the discretion of the Court under Section 5, Clause 1, of the Limitation Regulation. But the discretion has to be judicially exercised in a sound and reasonable manner and after due consideration of the facts. The test in such cases is whether the discretion has been exercised after appreciation and consideration of all the facts which are material for the purpose of enabling the Judge to exercise a judicial discretion and after application of the right principle to those facts.— **43 T. L. R.,** *459.*

**35.** The rule of law contained in 16 T. L. J., 134 that the omission to raise the objection about the non-production of a succession certificate in the original Court by the defendant does not prevent him from taking the objection in the Appellate Court, applies only to cases where from the facts admitted or proved a succession certificate is indispensable under the provisions of Section 3 of the Succession Certificate Regulation. Where, however, the applicability of the above Section is doubted and certain other facts are required to be alleged, admitted or proved to enable the Court to treat the subject-matter of the claim as the separate assets of a deceased person, the dictum in the above case is clearly inapplicable, as it is a settled rule of law that questions of law involving facts not alleged or proved cannot be allowed to be set up for the first time in appeal.— **17 T. L. J.,** *28.*

**36.** "When the time for appealing is once passed, a very valuable right is secured to the successful litigant; and the Court must therefore be fully satisfied of the justice of the grounds on which it is sought to obtain an extension of the time for attacking the decree, and thus perhaps depriving the successful litigant of the advantages which he had obtained."

(2) Section 3 of the Limitation Regulation, however, allows such delays to be condoned for sufficient cause shown. The expression "sufficient cause" occurring in the Section ought to be construed literally so as to advance substantial justice when no negligence in action or want of *bona fides* is imputable to the appellants. What is sufficient cause must depend upon the circumstances of each case, which circumstances would be different in particular cases. "This discretion ought not to be crystallized as it would become in course of time, by one Judge attempting to prescribe definite rules with a view to bind other Judges in the exercise of the discretion, which the Legislature has committed to them." "The discretion like all other judicial discretions ought, as far as practicable, to be left untrammelled and free so as to be fairly exercised according to the exigencies of each case."

In the circumstances of the case, it was held that the lower Appellate Court did not exercise its discretion improperly in excusing the delay of two days in filing the appeal when it was shown that the delay was caused by the mistake of the Vakil's clerk in computation, and that the appellant *bona fide* acted upon the advice given by the clerk.

(3) It is an accepted canon of interpretation of deeds that the intention of the parties to a document must be gathered from the words they have used in the document. Where such words are clear, definite and unambiguous, the Court will not be

justified in travelling beyond the document to make out that the parties in fact intended something other than what is contained in the document itself. One of the rules to be borne in mind is that "when a deed or other instrument consists of diverse clauses or parts, the law will give to each part its proper office, so as to ascertain and carry out the intention of the parties." The Courts should not allow a construction that reduces one important clause of the document to a nullity. It has also to be borne in mind that effect must be given to every word and clause, if possible, so that nothing should be left devoid of meaning or destitute of force.— **17 T. L. J.,** *178.*

**37.** A *bona fide* mistake made by a client owing to the wrong advice of his pleader is "sufficient cause" within the meaning of Section 5 of the Limitation Regulation, and the delay in presenting the appeal arising from such mistske ought, in the ends of justice, to be excused (F. B.).

*Per Parameswara Menon, J.*—It is a well-established rule of interpretation that statutes of limitation as they are restrictive of the common law right to take legal proceedings must be construed strictly, and that provisions which constitute exceptions to the operation of the enactment must be construed liberally.

The Courts shall not only not be departing from the well-known canons of construction regarding restrictive statutes like the statute of limitation but shall on the other hand be actively furthering the course of justice if they construe liberally the second Clause of Section 5 of the Limitation Regulation.

If the delay in presenting the appeal can be excused on the ground of a *bona fide* mistake, there is nothing in reason or common sense to differentiate between a mistake of fact and mistake of law, or between the mistake of the party and the mistake of his pleader. A mistake of law is as much a *mistake* as a mistake of fact, and it is very often extremely difficult, if not impossible, to say whether a particular mistake is one of fact or of law. To hold that the delay in presenting an appeal can be excused only on the ground of a mistake of fact, would be to place an unnatural construction on the language of Section 5 of the Limitation Regulation, a construction which could not have been in the contemplation of the Legislature. If mistakes of law are excluded from the operation of Section 5, the occasion for the exercise of the discretionary jurisdiction vested in a Court of Appeal by Section 5 of the Limitation Regulation will be extremely rare, if ever it arises at all.

*Per Venkitaramier, J.*—The provisions of the law of limitation, which is a statute which encroaches upon the rights of others, have always to be construed strictly. The defence of lapse of time against a past demand is not to be extended to cases which are not clearly within the enactment, while provisions which give exceptions to the operation of such enactments are to be construed liberally.

The expression "sufficient cause" occurring in Section 5 of the Limitation Regulation has to receive a liberal interpretation so as to advance substantial justice when no negligence or inaction or want of *bona fides* is imputable to the appellant.

(2) Applying the principle in the 35 T. L. R., 1 case and treating the appeal as validly filed, only when the copy of the decree was filed, the circumstances of the case would warrant the excusing of the delay in presenting the appeal The delay in the filing of the copies of the decree peremptorily required under Section 513 [= Or. XL, r. 1] has, in the case, to be excused (F. B.).— **43 T. L. R.,** *212* (=**17 T. L. J.,** *356*).

**38.** Section 12 of the Limitation Regulation permits the exclusion of the time taken for obtaining the copies irrespective of the person who applies for the same. The expression 'time requisite for obtaining a copy of the decree' occurring in paragraph

2 of the Section cannot be construed so as to restrict the application of this rule relating to exclusion to cases where the appellant himself makes the application.

*Per Venkitarama Aiyer, J.*—A mere difference of opinion between the High Court and the lower Appellate Court in the matter of the mode in which the discretion to excuse delay in the presentation of an appeal should be exercised cannot justify interference by the High Court with the action of the lower Appellate Court in such matters. If after appreciation and consideration of all the facts material to the disposal of the matter, the lower Appellate Court has exercised the discretion in a particular way, the High Court cannot with propriety interfere with the same.

*Per Joseph Thaliath, J.*—The appellant who uses a copy of the judgment and decree obtained by another cannot also take advantage of any special circumstances which the other might plead in getting any delay condoned.— **17 T. L. J.,** *517.*

**39** The admission of an appeal presented out of time is, no doubt, within the discretion of the Court under Section 5, Clause (1), of the Limitation Regulation. But the discretion has to be judicially exercised, in a sound and reasonable manner and after due consideration of the facts. The test in such cases is whether the discretion has been exercised after appreciation and consideration of all the facts which are material for the purpose of enabling the Judge to exercise a judicial discretion and after application of the right principles to these facts. Where the lower Appellate Court has failed to do so, the superior Court must interfere and exercise their own discretion. **19 T. L. J.,** *453.*

**40.** An award of Court is a decree and the procedure applying to execution of decree applies. The order of the executing Court refusing to allow an assignee-decree-holder (assignee of the award decree) is appealable.— **19 T. L. J.,** *602.*

**41.** Section 32 of the Limitation Regulation provides a summary remedy, and therefore, no appeal lies against the decree passed in a suit under that Section. But, at the same time, it is a decree and an appeal lies therefrom under Section 76. There is no provision either in the Civil Procedure Code or in the Limitation Regulation which takes away this right of appeal in regard to a decree under Section 32 of the Limitation Regulation.— **19 T. L. J.,** *603.*

**42.** Civil Courts cannot entertain appeals from any orders passed by subordinate Courts in the matter of stamp duty or penalty leviable on the instruments produced before such Courts.

Where a document has been improperly rejected by the Judge, the party aggrieved could appeal on the ground that the Judge has committed an error of law in refusing to receive the document in evidence.—

**45 T. L. R.,** *114*
(=**19 T. L. J.,** *876*).

**43.** In the absence of a specific order from the Court dispensing with the arguments on one of the questions raised in appeal, the omission by the Vakil to argue the same must be treated as amounting to an abandonment of the ground raised in the appeal memorandum.— **19 T. L. J.,** *937.*

**44.** See also—

Sec. 31.—**17 T. L. J.,** *339.*
" 75.—**18 T. L. J.,** *640.*
" 88.—**16 T. L. J.** *481.*
Or. VI —**17 T. L. J.,** *857.*
Or. XXI, r. 14.—
**19 T. L. J.,** *439.*
Or. XL, r. 1.—
**35 T. L. R.,** *1.*
**42 T. L. R.,** *327*
(=**16 T. L. J.,** *258*).

77. Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

Appeal from final decree where no appeal from preliminary decree.

78. No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court.

No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.

---

**Sec. 77** [= „ = *S. 97*]

I. "This Section is new, and is intended to prevent a preliminary decree being questioned after steps are taken up to a final decree and on the appeal against such final decree. When preliminary decrees are sought to be questioned, much expense and trouble might be avoided by an immediate appeal and adjudication."—

*Notes on Clauses.*

II. In regard to Section 97 of the British Indian Code which is reproduced here, the Indian Special Committee observe in their Notes on Clauses:—"The Committee have inserted an express provision to compel litigants to appeal from preliminary decrees, and have estopped them, on their failure to do so, from raising objections to such decrees in appeals from final decrees. On this point, they accept the unanimous opinion of the Calcutta High Court. They think it unreasonable that parties should allow proceedings to be carried on to their final stage and large costs to be incurred if they intend to rely upon objections which could be taken at an earlier stage."

III. A right of appeal under this Section arises only when a preliminary decree is drawn up.

---

**Sec. 78** [= S 547 = *S. 99*]

I. In regard to Section 99 of the British Indian Code, reproduced here, the Indian Special Committees observe :—"The Committee have extended this Clause in order to give the Courts a larger discretion in dealing with irregularities in proceedings, and they have inserted express words to meet the point decided in I. L. R, 26 Bom., 259 and I. L. R., 27 Mad., 80."

II. The corresponding Section in Regulation II of 1065 was as follows :—

"547. *No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.*—No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal, on account of any error, defect or irregularity, whether in the decision or in any order passed in the suit, or otherwise, not affecting the merits of the case or the jurisdiction of the Court."

III. *Misjoinder of parties or causes of action.*—See Order I, Rules 1 and 3, and Order II, Rules 3, 4 and 5.

**Case Law.**

1. The non-payment of stamp-duty not being an irregularity or error which would

affect the merits of the case or the jurisdiction of the Court, Section 547 of the Code bars interference by the Appellate Court.—
**16 T. L. R.,** *103.*

**2.** The objection as to want of jurisdiction of the District Court to hear the appeal, was not raised in the special appeal memo, and came rather late. Still, as it affected the jurisdiction of the Court, it was one which the High Court could not overlook under Section 547 of the Code.—
**19 T. L. R.,** *223.*

**3.** As the administration of the trust was vested in the trustees jointly, all the trustees should have been made parties in appeal. Temporary absence in England did not determine the office of such trustee. The appeal as against one alone of the trustees was therefore not maintainable. The omission to implead the other trustees was more than an irregularity. The Appellate Court was bound to see that all necessary parties were before it. The non-joinder was not merely a defect or irregularity. The objection in a suit of this sort goes to the very root of the case.— **1 T. L. J.,** *203.*

Fol.—13 T. L. J., 486.

[Note the change in law made by Rule 2 of Order XXXI.]

**4.** The hearing of a party without notice to the opposite party or his Vakil, after the case is taken up for judgment is, at the most, an irregularity which does not affect the jurisdiction of the Court, and is not, by itself, sufficient ground for reversing a judgment, if, as laid down in Section 547, the merits of the case are not affected by such irregularity.— **3 T. L. J.,** *215.*

**5.** The plaintiff obtained a money decree against a defendant, and in execution attached his properties. More than a month after such attachment, the defendant applied to set aside the *ex parte* decree. This application, though made beyond time, was allowed by the District Munsiff. On evidence being adduced by the defendant, it was found that a sum of Rs. 120 had been paid to the plaintiff. On appeal the District Judge concurred with the Munsiff in the finding the question of payment, but allowed the appeal, on the ground that the application to set aside the *ex parte* having been made at a time when the period of limitation had elapsed, the *ex parte* decree should not have been disturbed.

*Held.*—The District Judge was wrong in restoring the *ex parte* decree on the technical ground that the application was barred. An order setting aside an *ex parte* is not appealable: but under Section 560 of the Code [new Section 83], if the decree subsequently passed is appealed against, any error, defect or irregularity in the order setting aside the *ex parte* decree which affects the decision of the case may be set forth as a ground of objection in the memorandum of appeal. It does not necessarily follow that because of such error, &c., the decree must be set aside. Section 560 must be read in conjunction with Section 547. The order setting aside the *ex parte* decree could not be said to affect the merits of the case.— **31 T. L. R.,** *233*
**(=5 T. L. J.,** *461*).

Ref.—41 T. L. R., 257
( = 16 T. L. J., 29).
19 T. L. J., 383.

**6.** The erroneous admission of a document not duly stamped is an error, defect or irregularity not affecting the merits of the case or the jurisdiction of the Court, and is, as such, cured by Section 547 of the Code.— **8 T. L. J.,** *116.*

Ref.—13 T. L. J., 485.

**7.** Reading Sections 547 and 560 [new Section 83] together, it seems to be clear that the plaintiff is entitled to challenge in an appeal presented by him on a decree against him, the validity of the order of the lower Court setting aside the *ex parte* decree.— **8 T. L. J.,** *285.*

Fol.—35 T. L. R., 30.
Ref.—19 T. L. J., 867.

8. When a remand is made, it is the order of remand that confers jurisdiction on the Court to which the remand is made. The jurisdiction being created by the order of remand is defined and circumscribed by it.

Therefore, where the Court to which the remand is made has admitted evidence not covered by the order of remand and used such evidence in arriving at its findings, the findings returned are invalid in law.—

**15 T. L. J.,** *412.*

9. Under Section 14 (2) of the Limitation Regulation the creditor has a valuable statutory right. The defect of omission to give the right, cannot be said to be cured under Section 78 of the Civil Procedure Code, on the ground that the information which might be obtained as a result of the question disallowed by the Court would have no effect on the order of adjudication. The proceedings on an insolvency petition must be regarded as continuing down to the order of discharge (though there is a distinct stage, no doubt, when the order of adjudication is passed), so that ultimately the refusal to give the creditors their statutory right under Section 14 (2) of the Limitation Regulation may affect the merits of the case (F. B.).— **45 T. L. R.,** *76* (**=19 T. L. J.,** *181*).

10. (1) Neither under Section 547 (old) nor under Section 78 (new) could an appellant succeed in appeal on account of an erroneous order setting aside an *ex parte* decree or restoring a suit dismissed for default.

The words "jurisdiction of the Court" must be strictly construed. Where an application to set aside an *ex parte* decree is presented before the Court which passed the decree, that Court has jurisdiction to entertain the application, even though it may be in the particular instance its duty to reject the application on some particular ground, *e. g.*, that the application is barred by limitation. A distinction must be drawn between exercise of jurisdiction and existence of jurisdiction. "The authority to decide a cause at all and not the decision rendered therein is what makes up jurisdiction; and when there is jurisdiction of the person and subject-matter, the decision of all other questions arising in the case is but an exercise of that jurisdiction."

(2) An interlocutory order may, in certain circumstances, be the subject of revision, if the matter to which it relates stands by itself and if the ends of justice would be defeated if the power of revision were not exercised.

An order setting aside an *ex parte* decision by the Court which passed that decision will be interfered with in revision if it is clearly illegal, as no remedy will be available to the aggrieved party if interference in revision is refused.

(3) Where the right to apply to set aside an *ex parte* decree was barred under the old Limitation Regulation, such right is not revived by the passing of the new Limitation Regulation.

The admission of an application under Order IX, Rule 13, when the same is barred by limitation is such an error as would call for interference of the High Court in revision. It is not a mere case of an exercise of a discretion. The Court has done something which the law does not permit, owing to an erroneous view of the law. The order of the lower Court was set aside, and the application under Order IX, Rule 13, dismissed with costs (F. B.).—

**19 T. L. J.,** *383.*

11. See also—

Sec. 30.— **39 T. L. R.,** *220* (**= 13 T. L. J.,** *386*).

„ 40.— **2 S. D.,** *185.*

„ 89.— **41 T. L. R.,** *257* (**=16 T. L. J.,** *29*).

Or. XXXII, r. 12.— **29 T. L. R.,** *20* (**=3 T. L. J.,** *263*).

Or. XL, r. 21.— **34 T. L. R.,** *222* (**=9 T. L. J.,** *217*).

„ r. 22.—**14 T. L. R.,** *29.*

*Appeals from Appellate Decrees.*

Second appeal.

79. (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, on any of the following grounds, namely:—

(*a*) the decision being contrary to law or to some usage having the force of law;

(*b*) the decision having failed to determine some material issue of law or usage having the force of law;

(*c*) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits;

(*d*) the finding of the lower appellate Court on any question of fact material to the right decision of the case on the merits being in conflict with the finding of the Court of first instance on such question.

(2) An appeal may lie under this Section from an appellate decree passed *ex parte*.

---

Sec. 79 [ = S. 583 = *S. 100* ]

I. 1. This Section reproduces Section 100 of the British Indian Code, with the addition of Clause (*d*) which does not find a place in that Code. The present British Indian Section, again, is the same as Section 584 of the Code of 1882 slightly modified. The latter Section was as follows:—

"584. Unless when otherwise provided by this Code or by any other law, from all decrees passed in appeal by any Court subordinate to a High Court, an appeal shall lie to the High Court on any of the following grounds, namely:—

(*a*) the decision being contrary to some specified law or usage having the force of law;

(*b*) the decision having failed.........force of law;

(*c*) a substantial error.........by this Code or any other law, which may.........upon the merits.

An appeal may lie...........passed *ex-parte*."

2. The word "specified" in Clause (*a*) has been omitted by the Indian Special Committee as being in their opinion redundant.

II. 1. As enacted in Regulation II of 1065, the Section corresponding to Section 584 of the Indian Code of 1882, was as follows:—

"553. *Second appeals to High Court.*—Unless when otherwise provided by this Code or by any other law, from all decrees passed in appeal by any Court subordinate to the High Court, an appeal shall lie to the High Court on any of the following grounds (namely) :—

(*a*) the decision being contrary to some specified law or usage having the force of law ;

(*b*) a substantial error or defect in the investigation of the case or in the procedure as prescribed by this Code or any other law, which may possibly have produced error or defect in the decision of the case upon the merits ;

(*c*) the decision of the lower Appellate Court being in reversal of the decree of the Court of first instance and on a question of fact material to the right decision of the case.

*Explanation.*—In cases falling under Clause (*c*), the High Court shall be competent to go into the merits, as if the appeal had been preferred directly against the decree of the Court of first instance."

**2.** In regard to the changes made in adopting, in the old Regulation, Section 584 of the Indian Code of 1882, the Statement of Objects and Reasons said :—"74. Section 584 is amended so as to give a right of second appeal on facts in cases in which the lower Courts differ in appreciation of evidence. Second (special) appeal is now restricted to points of law. Nothing is more sickening than to hear the Judges of the High Court say 'we feel that the judgment is wrong, but we cannot interfere with it, as it purports to proceed on evidence'. The principle of accepting as correct, the judgment of a *single* Judge of the Zillah, reversing the decree of a Munsiff, who had the special advantage of watching the demeanour of witnesses while under examination is entirely open to question. The large number of remands which in special appeal, the High Court is obliged to make, owing to the unsatisfactory and arbitrary manner in which appeals are dealt with by some of the Zillah Judges, proves the necessity for the amendment of the law.

"75. An examination of the file of special appeals will show that a majority of them are cases in which the decree of the Court of first instance was disturbed. This circumstance points to the conclusion that, to secure full public confidence in the administration of Civil Justice, it is necessary that the Court of second appeal, should have the power of determining, which of the judgments of the lower Courts should be allowed to stand. It may be that, in a few cases, the evidence is equally balanced and that the second Appellate Court may not find sufficient grounds to reject the view of the Zillah Court. But a large percentage of second appeals relates to real property. The evidence brought in such cases often consists of documentary evidence of a reliable character. There are cases in which oral evidence is strong enough to enable the second Appellate Court to form a right conclusion. The fact that a second appeal lies on facts would act as a check upon hasty and sometimes arbitrary reversals. In support of the amendment now proposed, the opinion of Mr. Justice Collett, whose long experience on the Bench of the Madras High Court, enables him to speak with authority on the subject, may be quoted here with advantage.

'Considering that the Courts in India try Civil suits without the assistance of a jury and that, except in the High Court, only one Judge presides in each Court, it is undesirable that where the judgment of the Court of first instance upon the issues of fact is overruled on regular appeal, there should be no further appeal upon the facts. Without going into any lengthy reasons why this should be, I content myself with appealing to the *experience* of those acquainted with the system of special appeals, whether it is not so. But if the Court of

first instance and the Court on regular appeal have concurred in their view of the evidence, there is then, I consider, a reasonable certainty that a right conclusion has been arrived at. It is not possible in any human system of law to provide absolutely against all miscarriage ; there must be a limit to litigation somewhere and it is a reasonable, and will generally be a safe, restriction after two Courts have concurred in their conclusions upon the facts to limit the right of further appeal to a special appeal on the law of the case. On the other hand, anything short of the concurrence of two Courts upon the facts of a case has, I maintain, been *practically proved to be unsafe and unsatisfactory.* * * Appellate Courts presided over by single Judges often differ from the Court of first instance on issues of fact, upon grounds that are most unsatisfactory. The High Courts know and feel this perfectly and it is for this very reason that I urge the necessity of altering the procedure as to special appeals and allowing a further appeal upon the facts where the first Appellate Court has differed in its view of the evidence from the Court of first instance.'

The recent legislation in the Punjab and in the native State of Mysore allows a second appeal on facts where the lower Courts differ in their conclusions. That in British India, except in the Punjab, no second appeal on facts is allowed, is not a sufficient reason for allowing the present unsatisfactory state of things to continue here, especially when we know that financial considerations often stand in the way of desired reforms.''

**3.** For Clause (*c*) thus enacted, the amending Regulation II of 1070 substituted another Clause (*c*), which stands as Clause (*d*) in the present Section 79. The Select Committee who proposed the substitution observed:—

"As the law now stands, no second appeal on facts lies if the decrees of the two courts are concurrent, although the findings may not agree. In a suit brought on a bond, the Munsiff finds that the bond is genuine, but the claim is barred by limitation, the Zillah Judge, on appeal of the plaintiff may overrule the plea of limitation but find against the bond. In the result both the Courts dismiss the suit. The wording of Clause (*c*) of Section 553 does not admit of a second appeal in the case above put. That the framers of this Clause intended a second appeal whenever there may be conflicting findings on facts, is clear from the Statement of Objects and Reasons published when the present Civil Procedure Code was in the form of a Bill. We have given full effect to this intention in the amendment we have introduced in this Section."

## Case Law.

**1.** A special appeal lies from a decision passed *ex parte* against a respondent in regular appeal.— **2 T. L. R.,** *29.*

**2.** When the question raised in the appeal is one of fact and rested for its decision on pure appreciation of evidence on both sides and both the lower Courts have, in the case, concurrently given it against the defendant, it is not open to the High Court in special appeal to permit that question to be raised again in the High Court.— **7 T. L. R.,** *3.*

**3.** The power vested in the High Court by Clause (*c*) of Section 558 (of the new Civil Procedure Code) of revising findings of fact in special appeals, cannot be exercised in special appeals preferred against decrees passed by the Zillah Courts before the 1st Chingom 1066, the date on which the said Regulation came into operation. (F. B.).— **7 T. L. R.,** *113.*

**4.** Generally, objections which are not declared by law imperatively to operate as legal bar to actions, such as limitation, and which may or may not be allowed by Courts in the exercise of discretionary powers vested in them by law, should be taken by the parties interested in doing so, at the

earliest opportunity and pressed upon the Court's attention at the different stages of the action. Omission to notice such objections on the part of the Courts when the parties do not urge them, or waive them either by express words or by conduct, would not be a serious irregularity to warrant interference with the final decisions, if otherwise sound.— 9 T. L. R., *17*.

**5.** Objections not raised either in the lower Court or in the special appeal memorandum could not be entertained.—

10 T. L. R., *37*.

**6.** An order rejecting an application for setting aside an *ex parte* order against a defendant would, in the absence of an appeal against it, debar the defendant from impugning it in second appeal.—

11 T. L. R., *143*.

**7.** The plea of *res judicata* taken and determined in the original Court may be entertained in special appeal, even though it was not urged in the regular appeal.—

11 T. L. R., *154*.

**8.** The concurrent findings of the Courts below upon the issues raised being based upon evidence, are not open to revision in second appeal.— 11 T. L. R., *170*.

**9.** The defendant having filed no objection to the Munsiff's findings on facts when the plaintiff appealed to the District Court, he was debarred from re-opening the case in special appeal.— 13 T. L. R., *82*.

**10.** Absence of evidence is a question of law, but inadequacy of evidence is not. This being so, concurrent findings of the lower Courts based upon evidence have to be accepted as final.— 14 T. L. R., *31*.

**11.** The finding regarding the existence of a particular custom is not final simply because it is concurrent. Whether the evidence tendered establishes a usage in derogation of the ordinary law, and whether the legal requisites of a valid custom entitled to the recognition of the Courts exist in a particular case is not a question of fact, but one of law fit for the determination of the special Appellate Court.—

15 T. L. R., *14*.

Fol.—27 T. L. R., 220. [=2 T. L. J., 408].

Ref.—5 T. L. J., 302.

**12.** Where the Appellate Court after taking additional evidence agreed with the finding of the Court of first instance:

*Held*.—The evidence so taken was not open to re-consideration by the special Appellate Court. The finding became in law, as it in fact was, concurrent and could not be disturbed by the Court of second Appeal under Section 558 of the Code. The fact that the finding of the Court of first instance was partly or wholly based on failure to produce evidence could not make any difference so as to entitle the High Court to go into the evidence. The only test is whether the *finding* is concurrent or conflicting.—

15 T. L. R., *44*.

**13.** The lower Court's concurrent findings on facts are final so long as they are supported by some evidence. It is not open to the High Court to enter upon evidence when the findings are concurrent, and all that has to be done in such cases is to see that the findings are not arbitrary, and that there is some evidence of a formal kind in support of such findings.—

17 T. L. R., *143*.

**14.** Section 4 of the Suits Valuation Regulation (III of 1068) provides that objections to the jurisdiction of the Court of first instance cannot be considered if not taken in the Court of first instance at or before the hearing at which issues were first framed and recorded. This exception does not cover cases of over-valuation and under-valuation in the Appellate Courts. The High Court therefore had to decide the question whether the District Court had jurisdiction to hear the appeals.— 19 T. L. R., *223*.

**15.** "There is no jurisdiction to entertain a second appeal on the grounds of an erroneous finding of fact however gross or

inexcusable the error may seem to be. The finding upon a question of fact is final if the Court had before it evidence proper for its consideration in support of the finding" (18 Cal., 3).

"A second appeal will not lie on the ground that the lower Court has misapprehended the evidence, discarded and not given sufficient weight to other evidence or given weight to other evidence to which it was not entitled."

A clear finding, right or wrong, cannot be interfered with in second appeal unless there is no evidence at all on the record. It is only when a document which is the very basis of a suit is misconstrued by both the lower Courts that the High Court can interfere. (5 Bom. L. R., 956).

The High Court is not in second appeal justified in inferring from an Appellate Judge not having in his findings remarked upon every portion of the evidence that he has excluded it from his consideration.— **3 S. D.,** *280.*

**16.** The misconstruction of a document which is the foundation of the suit which is in the nature of a contract, or a document of title, is allowed to be a ground of special appeal; but a special appeal does not lie because some portion of the evidence may be in writing and the Judge makes a mistake as to the meaning of it.— **K. P.,** *474.*

**17.** Where the two Courts below concurrently found that the plaint property was the self-acquisition of the deceased husband of the defendant and that defendant was entitled to succeed, the plaintiffs (nephews of the deceased) in special appeal wished to file a fresh record and contended mainly that the *onus* of proof was wrongly thrown on them :

*Held.*—(1) According to Sections 558 and 554, C. P. C., [new Sections 79 and 80 ], the fresh document could not be admitted as it was intended to re-open the question of self-acquisition concurrently found by the Courts below.

(2) The *onus* of proof was not misplaced and there was no ground for the appeal as there were concurrent findings upon a question of fact and as no evidence that had been adduced had escaped attention.— **K. P.,** *485.*

**18.** The question whether facts exist to support the allegation of the absence of reasonable and probable cause is not a question of law. It is not, therefore, open to the High Court to interfere in second appeal with a finding thereon concurrently recorded by the Courts below.— **28 T. L. R.,** *175.*

**19.** An objection to a suit on the ground that it is one for partial partition is one relating to processual law, and must be decided not according to any rule of Hindu Law but according to the principles of the Civil Procedure Code. The right of the defendant in such a case is not to have the suit dismissed *in toto* but to insist on the plaintiff including all the properties in the suit and amending his plaint for the purpose.

And hence an objection to the maintainability of a suit on the ground that it is one for partial partition will not be allowed to be raised for the first time in special appeal.— **5 T. L. J.,** *123.*

**20.** It is always a question of fact whether any given set of circumstances gives rise to an implication either of assent or dissent. In other words, the implication is not one in law but merely a logical inference from facts proved and admitted.

A misconception as regards the correct point of view of an issue, which has entirely vitiated the Judge's appreciation of evidence and the finding he ultimately recorded is a ground of second appeal.— **6 T. L. J.,** *474.*

**21.** The question whether a valid custom exists or not is a mixed one of law and fact; for though in each case the question has ultimately to be determined upon the evidence adduced the freedom of judgment of

the Court in coming to a conclusion is not absolutely unfettered, as the finding has to be arrived at in accordance with certain pre-established rules of law, that is to say, the Court has to see whether the requisites of a legally valid custom which have been laid down by the law have been shown to exist in the particular case, whether the finding is based on evidence which is legally admissible and legally sufficient, and whether the evidence has been brought to the notice of the Court in accordance with fixed rules of law.

If the above rules of law have been complied with, the High Court will not in second appeal interfere with the concurrent findings of the lower Courts as to the existence of the custom in issue in the case, though in a proper case (as for instance when the judgment is based on slender materials), the High Court may hold that it should not be treated as a precedent in future suits.

When it is said that the evidence must be legally sufficient, it is not meant that the evidence on record should be sufficient to induce the second Appellate Court to come to the conclusion that the alleged custom exists: but that it should be such as a reasonable man may, on the strength of it, find in favour of the existence of the custom. If, therefore, there is evidence on record, on which a Judge may reasonably find that the custom alleged in the case exists, then the concurrent findings of the lower Courts cannot be disturbed in second appeal.—

**32 T. L. R.**, *157*

**(=6 T. L. J.**, *243***)**.

**22.** The question whether, in the absence of direct evidence, a particular inference or conclusion can be drawn from a certain set of facts is one of law and not merely of facts. From facts found, it is often easy to rule with certainty that a certain legal inference ought or ought not to be drawn. When such a state of fact occurs, the Court in second appeal can and often does correct erroneous conclusions drawn by the lower Appellate Court. In other words, the facts found need not be questioned. It is the soundness of the conclusions from them that is to be questioned and this is a question of law. It is therefore open to the High Court sitting as a Court of second appeal to satisfy itself as to the soundness of the conclusion drawn by the lower Courts upon the facts found by them.— **10 T. L. J.**, *154*.

Appl.—17 T. L. J., 345.
Fol.— 18 T. L. J., 899.

**23.** A plea, taken in the Court of first instance but abandoned in the lower Appellate Court, could not be raised in second appeal, as it depended on questions of fact.—

**16 T. L. J.**, *143*.

**24.** As regards second appeals, the functions of the High Court are completely circumscribed by Sections 79 and 80 which are intended for the express purpose of securing some measure of finality in cases where the balance of evidence, oral and documentary, arises for decision.

The fact that the High Court would have arrived at a different conclusion upon the evidence, oral and documentary, adduced in the case would not by itself amount to an error of law or procedure within the meaning of Section 79 and justify an interference with the concurrent findings of fact recorded by the primary and first Appellate Courts. If there is evidence to be considered, the decision of the lower Courts, however unsatisfactory they may be when examined, could not be disturbed. No such interference is permissible on the ground of the weakness or meagreness of the evidence. Even when the findings are based upon a misconstruction of certain documents, which are neither documents of title nor embody a contract nor form the foundation of the suit, the findings should not be disturbed. If, however, documents form the basis of the suit, interference could be made. But when the Appellate Court proceeds upon wrong principles or upon an erroneous view as to the burden of proof, or

Second appeal on no other grounds.

**80.** No second appeal shall lie except on the grounds mentioned in Section 79.

Power of High Court to determine issues of fact.

**81.** In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue of fact necessary for the disposal of the appeal but not determined by the lower Appellate Court.

---

when it leaves out of account an important portion of the evidence which may have a material bearing in the decision of the matter, such interference is permissible.—

**43 T. L. R.**, *237* (= **17 T. L. J.**, *510*).

**25.** Under Section 553 [new Section 79], concurrent findings of fact would under normal circumstances be final, and the second Appellate Court would not ordinarily be justified in interfering with the same. Of course, if errors of law which would cover errors in appreciation or applying the rules of evidence or the judicial methods of weighing evidence are committed, such findings could be interfered with. The same is also allowed when an important portion of the evidence which has a material bearing in the decision of the matter is left out. No such error or exclusion was made out in the case. The question whether a particular inference or conclusion could be drawn from a particular set of facts would be a question of law within the meaning of Section 553, and therefore a ground for interference in second appeal by the High Court.—

**18 T. L. J.**, *899*.

**26.** A second appeal was preferred against the order of the lower Appellate Court refusing to set aside a sale under Order XXI, Rule 89. A preliminary objection was taken that no second appeal lay. Order XLII, Rule 1, provides for a first appeal against the order and Section 82. Clause(2), expressly prohibits second appeals from orders passed in appeal under that Section. The contention was that as the new Code was not in force on the date of the order by the original Court, the provisions of the new Code did not apply to the case. But before the second appeal was filed, the new Code had come into force, and an enactment which deals with procedure only, unless the contrary is expressed applies to all actions whether commenced before or after the passing of the Act. The second appeal was therefore governed by the law of procedure in force on the date of the appeal and not the Code in force on the date of the order of the original or first Appellate Court. The preliminary objection must therefore prevail.— **19 T. L. J.**, *406*.

**27.** Pleas which were not put forward in the plaint or at any stage of the suit could not be allowed to be raised for the first time in second appeal.— **44 T. L. R.**, *11*.

**28.** See also—

Or. XXVI, r. 18.—

**17 T. L. J.**, *345*.

---

**Sec. 80** [= S. 554 = *S. 101*]

**Case Law.**

See Sec. 79.—**43 T. L. R.**, *237* (= **17 T. L. J.**, *510*)

**K. P.**, *488*.

Or. XXVI, r. 18—

**17 T. L. J.**, *345*.

---

**Sec. 81** [= — = *S. 103*]

This Section reproduces Section 103 as enacted in Act V of 1908. That Act has been amended by Act VI of 1926 which has substituted the words—"which has not been determined by the lower Appellate Court or which has been wrongly determined by such Court by reason of any illegality,

*Appeals from Orders.*

Orders from which appeal lies.

**82.** (1) An appeal shall lie from the following orders, and, save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders :—

(*a*) an order superseding an arbitration where the award has not been completed within the period allowed by the Court ;

(*b*) an order on an award stated in the form of a special case ;

(*c*) an order modifying or correcting an award ;

(*d*) an order filing or refusing to file an agreement to refer to arbitration ;

(*e*) an order filing or refusing to file an award in an arbitration without the intervention of the Court ;

(*f*) an order under Section 75 ;

(*g*) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree ;

(*h*) any order made under Rules from which an appeal is expressly allowed by Rules.

(2) No appeal shall lie from any order passed in appeal under this Section.

---

omission, error or defect such as is referred to in Sub-section (1) of Section 100."—for the words—"but not determined by the lower Appellate Court."

**Sec. 82** [ = S. 557 = *S. 104* ]

I. "It will be seen that several orders which are, at present, made appealable, do not find a place in this Section. The policy is to permit as little interference as possible with the orders passed in the normal course of a suit in its progress up to the decree; and provide for appeals against such orders only as seriously affect the property and liberty of a litigant. Any other interlocutory order may, as provided by Section 84, be made a ground of appeal in any further proceeding that may be taken against the decree." *Notes on Clauses.*

II. For Section 557 of Regulation II of 1065, see under Order XLII, Rule 1.

III. 1. Section 104 of the Indian Code has the following Clause in addition :—

"(e) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration."

This Clause has been transferred, in the Regulation, to Order XLII, Rule (1), where it will be found as Clause (23).

(b) Act IX of 1922 has added the following Clause and Proviso to Sub-Section (1) of Section 104 of the Indian Code :–

"(ff) an order under Section 35-A;"

"Provided that no appeal shall lie against any order specified in Clause (ff) save on the ground that no order, or an order for the payment of a less amount, ought to have been made."

[For Section 35-A, referred to, see under Section 32].

IV. 1. The adjudications of a Court of law may be divided into two classes--decrees and orders. Orders may be divided into appealable and non-appealable orders. Under the new Code, there is no second appeal from any order, while under the old Code second appeals were allowed in respect of certain orders. Under the definition of decree in the new Code, certain orders are now decrees, such as orders under Sections 40, 108 and 109, Order XXI, r. 2, orders rejecting plaint, orders rejecting appeal as time-barred.

2. Appealable orders are those mentioned in Section 82 and Order XLII, Rule 1.

---

V. Sec. 82 (1):

*Clause* (a).– See Order XXXIX, Rule 8.
*Clause* (b).– " " " Rule 11.
*Clause* (c).– " " " Rule 12.
*Clause* (d).– " " " Rule 17.
*Clause* (e).– " " " Rule 21.
*Clause* (f).– Section 75. This Section corresponds to Sections 470 and 476 of Regulation II of 1065. Under that Code, orders under Section 470 were not appealable, while those under Section 476 were appealable.

It may be noted, however, that though the old Code (Section 557) did not provide for appeals from orders under Section 470, the practice appears to have been to allow appeals from such orders—see case law under Section 75.

*Clause* (g).—See Section 74.
" Order XVI, Rules 1[illegible] 17 [illegible]
" " XXVI, Ru[illegible], 326).
" " XXXVI, [illegible]
*Clause* (h).—See Order XLI[illegible], 161).

Case Law.

1. An order for mainten[illegible]ration of the [illegible]tion 366, Criminal Proce[illegible]ssion of the passed in favour of certai[illegible]ermanent in- against the plaintiff. The [illegible]ndants from ed the suit for cancellatio[illegible]other reliefs. Pending that suit, the plain[illegible]n of the suit, an injunction restraining the[illegible]mend the from enforcing the order of m[illegible] for evic- This was granted on condition of h[illegible]mitted security, and the respondent in the ap[illegible] executed a security bond as surety for the plaintiff, making himself liable for the amount. Contrary to the injunction order, the defendants enforced the order of maintenance and had the plaintiff arrested and kept in jail. The respondent therefore applied to the Court to be discharged from his surety bond. His application was granted and the defendants appealed to the Court below. That appeal was dismissed on the preliminary ground that no appeal lay. On the question whether such appeal lay:

*Held*,—No appeal lay. The order under appeal was not one of the orders contemplated by Section 82.

Section 109 cannot also apply. In order that Section 109 may apply, execution must be taken out against the surety in respect of the decree or order. That stage was not

83. (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irrgularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

Other orders.

(2) Notwithstanding anything contained in Sub-section (1), where any party aggrieved by an order of remand made after the commencement of this Code from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

---

reached in the case, as, before any execution was taken against the surety, the bond itself was discharged.— **19 T. L. J.**, *621.*

**2.** No appeal lies from an order rejecting an application for the issue of a correct and proper proclamation of sale.

Proceedings of the executing Court in regard to the value of the property in a sale proclamation are merely administrative and not judicial. In settling the value or other details of the sale proclamation for the purpose of the sale, the Court judicially decides nothing.— **19 T. L. J.**, *924.*

**3.** See also—

Sec. 40.—**19 T. L. J.**, *962.*
„ 75.—**18 T. L. J.**, *640.*
„ 88.—**19 T. L. J.**, *865.*

[And also under the Orders and Rules noted above against the Clauses of Sub-Section (1) of the Section.]

---

Sec. 83 (1) [ = S. 560 = S. 105 (1)]
„ (2) [ = — = „ (2)]

I. 1. Section 560 of Regulation II of 1065 corresponds to Sub-section (1) of the new Section and was as follows :—

"560. *No other appeal from orders; but error therein may be set forth in memorandum of appeal against decree.*—Except as provided in this Chapter, no appeal........ order passed by any Court........; but if any decree be appealed against, any error, defect or irregularity in any such order, affecting ........of appeal."

**2.** As regards Sub-section (2), the Notes on Clauses said :—"This provision is analogous to the provision relating to preliminary decree, and is enacted for the same reason."

II. The new Section reproduces Section 105 (1) and (2) of the British Indian Code. In Sub-section (1), it will be noted that the word 'such' which occurred in the expression 'in any such order' in the old Code is not now found there. In deleting the word, the Indian Special Committee said that it was done to remove a difficulty which it was creating, as it was contended that the Section applied to non-appealable orders only, a contention, however, that was overruled by the Privy Council (10 Moo. I. A. 340, 413; 12 Moo. I. A., 157).

III. In regard to Sub-section (2), the Indian Special Committee observed :—

"Though the remarks of the Privy Council in Moheshur Sing V. The Bengal Government (7 Moo. I. A., 283) are wide enough to embrace an appeal from an order of remand, the Committee think those orders were probably not in their Lordships' contemplation when they condemned the view that a failure to appeal from an interlocutory order should deprive the person aggrieved of his right to object to such order when subsequently appealing

What Courts to hear appeals.

84. Where an appeal from any order is allowed, it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court (not being the High Court) in the exercise of appellate jurisdiction, then to the High Court.

*General Provisions relating to Appeals.*

Powers of Appellate Court.

85. (1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power—

(*a*) to determine a case finally;
(*b*) to remand a case;
(*c*) to frame issues and refer them for trial;
(*d*) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

---

from the decree. And the Committee think there are good reasons on the score of delay and expense for treating an appeal from an order of remand as a special case and precluding an appellant from taking, on an appeal from decree, any objection that might have been urged by way of appeal from an order of remand."

**Case Law.**

See—

Sec. 78.—**31 T. L. R.**, *233* (= **5 T. L. J.**, *461*).
**8 T. L. J.**, *236*.
" 89.—**14 T. L. R. App.**, *22*.
**K. P.**, *236*.
**38 T. L. R.**, *203* (= **12 T. L. J.**, *206*).
**41 T. L. R**, *257* (= **16 T. L. J.**, *29*).
**17 T. L. J.**, *125*.

Or. IX, r. 4.—
**7 T. L. R. App.**, *53*.

Or. IX, r. 13.—
**15 T. L. R. App.**, *56*.
**17 T. L. R. App.** *1*.
**39 T. L. R.**, *63* (=**12 T. L. J.**, *31*).
" XXI, r. 87.—**18 T. L. J.**, *952*.
" XL, r. 22.—**11 T. L. R.**, *8*.
**14 T. L. R.**, *29*.
" r. 24.—
**44 T. L. R.**, *62* (= **18 T. L. J.**, *1081*).
" XLV, r. 7.—
**18 T. L. R.**, *167*.

---

**Sec. 84** [ = S. 558 = *S. 106*]

---

**Sec. 85** (1) [ = — = *S. 107 (1)* ]
" (2) [ = S. 551 = " *(2)* ]

I. Sub-section (1) is new.

*Clause* (a).—See Or. XL, r. 23.
*Clause* (b).— " " " r. 22.
*Clause* (c).— " " " r. 24.
*Clause* (d).— " " " rr. 26, 27.

II. Section 551 corresponds to Sub-Section (2) and Order XXII, Rule 11, and was as follows :—

"551. *Appellate Court to have same powers as Courts of original jurisdiction.*—The Appellate Court shall have, in appeals under this Chapter, the same powers, and shall perform as nearly as may be the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction, in respect of suits instituted under Chapter V; and, in Chapter XXI, so far as may be, the words "plaintiff," "defendant" and "suit" shall be held to include an appellant, a respondent and an appeal, respectively, in proceedings arising out of the death or marriage of parties to an appeal.

The provisions hereinbefore contained shall apply to appeals under this Chapter so far as such provisions are applicable."

['This Chapter' referred to is Chapter XXXIX dealing with 'Appeals from original decrees'. Chapter V deals with the 'Institution of suits', and Chapter XXI with the 'Death, Marriage and Insolvency of Parties'.]

### Case Law.

**1.** Parties cannot be allowed in appeal to supplement their pleadings by addition of important averments not thought of in the lower Court.— **4 T. L. R.,** *26.*

**2.** An attaching decree-holder acquires by his attachment such an interest in the subject-matter of the attachment as would entitle him to be made a party to the appeal preferred against the decree attached.

Section 551 read with Sections 28 [=Or. I, rr. 8 (2), 10 (2) & (3) & 11] and 356 [= Or. XXII, r. 10 (1)] empowers the Appellate Court to make the attaching decree-holder a party in appeal.

An agreement which allows the judgment-debtor to pay the decree amount in instalments is an agreement to give time for the satisfaction of a judgment-debt contemplated in Section 254, Civil Procedure Code. Such an agreement made without the sanction of the Court is void only for execution purposes and not void for all purposes (F.B).

*Per Krishnan Nair, C. J.*—Under Section 356 any person in whose favour an interest is created or on whom an interest devolves during the pendency of a suit, may be made a party to a suit. Similarly, under Section 551 read with Section 356, a person who obtains an interest during the pendency of an appeal may be made a party to the appeal. The use of the words "death" and "marriage" in the latter part of Section 551 does not restrict the wide powers given under the first part of the Section and confine the power to cases of interest created by death and marriage alone and make it inapplicable to other classes of interest such as those created by assignment or otherwise. In fact interest created by death and marriage are specifically referred to in the Section, but other classes of interest are not excluded either expressly or by necessary implication.

An agreement to give time for the satisfaction of a judgment-debt without the sanction of the Court is void only for execution purposes, and not for all purposes, and a suit based on such an agreement is maintainable. To hold otherwise would be to hold that the Legislature intended to insert a rule of substantive law in a Code which deals exclusively with adjectival law.

No distinction can be made between an agreement which keeps a decree alive and an agreement which does not keep a decree alive.

If consideration be necessary, ready cash payment of a portion of the decree-debt and the certainty of getting a fixed amount regularly every month without the trouble of execution and the uncertainty of being able to realise the decree amount may be regarded as consideration for a relinquishment of a portion of the decree amount and for the consent to pay in monthly instalments.

*Per Hunt, J.*—An agreement offending against the provisions of Section 254 is void only for purposes of that Section and not for all purposes and is no bar to a fresh suit. The agreement has consideration. The consideration moving from the judgment-creditor was his forbearance to execute his decree, and on the part of the judgment-debtor his guaranteeing payment under the agreement of the amounts therein agreed to be paid.

*Per Ramachandra Row, J.*—A distinction should be drawn between cases where the decree has been extinguished by the agreement and those where the right to execute the decree has been only suspended. Where the decree is extinguished by the agreement, a separate suit will lie in spite of Section 254. If the agreement did not contemplate the extinction of all remedies under the decree, then in order that it may be used upon, it should be supported by consideration. Though the extinction of the decree is not necessarily the only possible consideration, it is an essential part of the consideration.

Where a decree is capable of execution and it was the intention of the parties to keep it alive, a suit would not lie on the agreement which offends against Section 254. In such a case, a judgment-debtor cannot successfully sue for damages for the breach of the agreement to certify the adjustment to the execution Court under Section 255 [=Or. XXI, r. 2] in the absence of an agreement to that effect. This view does not prohibit the judgment-debtor from recovering money paid but not certified, for the right of action to sue for the recovery of money paid for an existing consideration which has subsequently failed, still subsists.—

**26 T. L. R.,** ***83***
**(=1 T. L. J.,** ***234*****).**

[For Section 254 referred to and which has been omitted in the new Regulation, see under Or. XXI, Rule 1.]

Dist.—28 T. L. R., 143
(=3 T. L. J., 110).
36 T. L. R., 56.
Rel.— 9 T. L. J., 286.
Ref.— 44 T. L. R., 367
(=18 T. L. J., 1162).

**3.** An application to be appointed guardian of the person and property of certain minors by the husband of one of the minors was opposed by the paternal grand-mother of the minors, and was rejected by the District Judge. On appeal by the applicant, it was contended for him, *inter alia*, that the Appellate Court had not the power to examine the evidence and itself appoint a guardian, as such power was vested in the District Court alone under the Guardian and Wards Regulation.

*Held.*—(1) Applications under the Guardian and Wards Regulation, especially when contested, partake of the nature of suits, and the provisions of Section 551 of the Civil Procedure Code, which prescribes the powers of the Appellate Courts are applicable to appeals coming before them under Section 43 of the Guardian and Wards Regulation.

Even in the case of an appeal filed under Section 43 of the Guardian and Wards Regulation against an order of the District Court, where such order admittedly specifically deals with only one of the matters in dispute, and does not deal with any other matters or matters in dispute between the parties, it is not incumbent on the Appellate Court to remand the appeal to the lower Court. It is competent to the Appellate Court itself, where it finds that the evidence on record is sufficient for a disposal of the questions in controversy between the parties and where it does not appear that any evidence was excluded by the lower Court, to decide the questions in dispute forthwith. Sections 546 [=Or. XL, r. 31] and 551 of the Civil Procedure Code must be read along with Section 43 of the Guardian and Wards Regulation.

(2) The words "or Court" occurring in Section 10 of the Guardian and Wards Regulation should be taken to refer not exclusively to the Court of first instance but to include the Court of Appeal as well.

Section 43 of the Guardian and Wards Regulation does not define the extent of the powers of the Appellate Court. The Appellate Court when it hears the appeal is, therefore, competent to make in substitution for the order passed by the inferior Court, such an order as, in its opinion, ought to have been passed by that Court. In other words, if the Appellate Court, when it hears the appeal, is satisfied that A and not B ought to be appointed guardian of the minor, it will be competent for it to appoint A as such guardian.—**28 T. L. R.**, *197* (=**3 T. L. J.**, *154*).

**4.** Where the original relief claimed has, by change of circumstances, become inappropriate, Courts may take into consideration events that have happened since the date of suit in deciding what should be the appropriate relief that should be decreed.— **35 T. L. R.**, *155*.

Fol.—13 T. L. J., 407.
39 T. L. R., 292.
Ref.—12 T. L. J., 154.
42 T. L. R., 128
( =15 T. L. J., 326).

**5.** An appeal preferred against a person who was not alive on the date of its presentation is not maintainable and the appellant cannot be allowed to substitute another in the place of the deceased and continue the action. The appeal abated and was dismissed.— **36 T. L. R.**, *117*.

**6.** Suit for redemption of a mortgage of 1062 granted by a Malayali-Brahmin Jenmi. The defence was that the tenure created by the deed was an irredeemable Kanom. The deed did not stipulate for the payment of Adukkuvathu at the time of renewal, but simply provided for renewal at the end of 12 years according to 'established practice' (ഉഠ). The suit was in 1083.

*Held* (in special appeal).—Though at the hearing of the appeal such additional period had also expired, plaintiff could not get a decree for redemption, as the decree must have reference to the state of things existing on date of plaint, and the plaintiff was not entitled on date of plaint to get the relief he now claimed.— **2 T. L. J.**, *145*.

Com.—13 T. L. J., 407.
Ref.—42 T. L. R., 128
( =15 T. L. J., 326).

**7.** A suit for redemption was instituted on 6-2-1091, but the term ran up to 10-7-1095. The suit was dismissed on the ground that the suit was premature. The term having expired during the progress of the suit:

*Held.*—A decree for redemption should be passed.

In exceptional cases a Court may take notice of events which have happened since the institution of the suit and has inherent power to afford relief on the basis of altered conditions.— **13 T. L. J.**, *407*.

Dist.—42 T. L. R., 128
( =15 T. L. J., 326).
Ref.—43 T. L. R., 344
(=17 T. L. J., 161).
Fol.—18 T. L. J., 640.

**8.** Plaintiff was a member of the Tarwad of which the second defendant was the Anandaravan. Plaintiff sued to redeem a document in favour of the predecessor-in-title of first defendant. The second defendant contested the suit on the ground that plaintiff as a junior member had no right to sue for redemption in his life-time. First defendant supported the contention and also set up the defence that second defendant had received from him a sum of money for which credit was to be given when a renewal was executed and that he was entitled to at least one renewal for 12 years. The Munsiff dismissed the suit. The District Judge allowed the suit, holding that the death of the second defendant pending the

suit gave plaintiff a right to sue and that second defendant had no authority to grant an additional term of 12 years on receipt of Adukkuvathu. In special appeal by defendant, the main question was whether plaintiff was entitled to a decree by reason of the death of second defendant which happened when the appeal was pending in the District Court.

*Held.*—Plaintiff was not entitled to any relief. The suit was dismissed.

*Per Chatfield, J.*—The general rule is that the plaintiff must fail in his suit if he cannot show that at the date of the plaint he had a cause of action. It is not enough that during the course of the action, circumstances have so changed as to give rise to a cause of action. The rule is that the decree must have reference to the state of things existing at the date of the plaint and where at that date the plaintiff had no cause of action, no relief could be given to him. But there are exceptions to this rule.

It is in the power of the Court and often it is its duty to take notice of events which have happened subsequent to suit and afford relief on the basis of altered conditions. But there are certain restrictions to this doctrine.

The cause of action should have come into existence during the pendency of the case in the trial Court, as otherwise, a judgment, dismissing a suit as premature, could not be regarded as in any way incorrect, or in the alternative, the point must have been one which was not taken by the opposite party in the trial Court but only in the Appellate Court after a decision has been passed against him. Further it must be clear that the defendant has no defence to the suit except the fact that it is premature. Even within these limits, a Court, though it might have jurisdiction to pass a decree, might very well refuse to exercise that jurisdiction in cases where the original absence of right on the part of the plaintiff to sue was obvious. Neither of the above state of facts existed in the case.

*Per Vurghese J.*—A Court may take notice of events that happened subsequent to the filing of the suit to make the relief granted appropriate and effective and to shorten litigation. This does not go to the length of saying that the plaintiff who had no right to sue on the date of the suit may be given any relief owing to the change of circumstances which took place after filing of the plaint in the original Court —

**42 T. L. R.,** *128*
(=**15 T. L. J.,** *326*).

Ref.—43 T. L. R., 344
(= 17 T. L. J., 161).
Fol.—18 T. L. J., 640.

**9.** The suit was for declaration of the plaintiff's title to and possession of the plaint property and for a permanent injunction restraining the defendants from entering upon the same and for other reliefs. Two years after the institution of the suit, plaintiff applied for leave to amend the plaint by the inclusion of a prayer for eviction on the basis of a trespass committed subsequent to the institution of the suit.

*Held.*—The amendment should be allowed. Even supposing that the prayer for a permanent injunction claimed by way of consequential relief was incompetent and the suit, in the form in which it was originally presented, was bad, the amendment could be allowed.

Events subsequent to the filing of the suit could be taken into account by the Courts in appropriate cases in granting applications for amendments of plaints. Ordinarily such reliefs should not be granted to a plaintiff who had no cause of action at the date of the suit. But the same could, however, be allowed in very exceptional cases in exercise of the inherent jurisdiction in order to grant reliefs rendered necessary by reason of the altered conditions after suit, to make the same appropriate

Procedure in appeals from appellate decrees and orders.

86. The provisions of this Part relating to appeals from original decrees shall, so far as may be, apply to appeals—

(a) from appellate decrees, and

(b) from orders made under this Code or under any special or local law in which a different procedure is not provided.

---

## PART VIII.

### Reference, Review and Revision.

Reference to High Court.

87. Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit.

---

and effective and to shorten litigation. In the peculiar nature of the case an adjudication on the claim to the above relief was considered necessary for the avoidance of multiplicity of suits and the application treated as deserving exceptional treatment.— **43 T. L. R.**, *344* (=**17 T. L. J.**, *161*).

Fol.—18 T. L. J., 640.

**10.** If an appeal is preferred and the same comes to be rejected for any of the reasons mentioned in Section 50 [=Or. VII, r. 11], such presentation will be no bar to a fresh appeal, as under Section 551 the principle underlying Section 52 [ =Or. VII, r. 13] is clearly applicable to memoranda of appeals.

In an appeal against the final decree in a partition suit, it is open to the appellant to question the correctness of the preliminary decree or order for partition when no appeal has been preferred therefrom within the time allowed by law.

The rejection of an appeal from a preliminary decree on the ground of non-payment of proper court fee on the appeal memorandum does not operate as a bar to the raising of objections to the decree in an appeal filed from the final decree.

The old Civil Procedure Code recognised preliminary decrees (F. B.).— **44 T. L R.**, *315* (=**18 T. L. J.**, *996*).

**11.** See also—
Or. XXIII, r. 1.—**19 T. L. J.**, *303*.
„ XL, r. 21.—**19 T. L. J.**, *952*.

---

**Sec. 86** [ = Ss. 556, 559 =*S. 108* ]

I. See also Order XLI, Rule 1 and Order XLII, Rule 2.

II. The corresponding Sections of Regulation II of 1065 are given below :—

"556. *Provisions as to second appeal.*—The provisions contained in Chapter XXXIX shall apply, as far as may be, to appeals under this Chapter, and to the execution of decrees passed in such appeals."

[Chapter XXXIX relates to Appeals from Original Decrees. "This

88. Subject as aforesaid, any person considering himself aggrieved—

Review.

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court in non-appealable cases,

may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

---

Chapter" refers to Chapter XL relating to Appeals from Appellate Decrees].

"559. The procedure prescribed in Chapter XXXIX shall, so far as may be, apply to appeals from orders under this Code, or under any special or local law in which a different procedure is not provided."

Sec. 87 [ = S. 563 = *S. 113*]

I. Section 563 of Regulation II of 1065 was as follows :—

"563. *Reference of question to High Court.*—If before or on the hearing of a suit or an appeal in which the decree is final, or if in the execution of any such decree, any question of law or usage having the force of law, or the construction of a document which construction may affect the merits, arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court."

II. See Order XLIV, Rule 1.

Sec. 88 [= S. 569 = *S. 114*]

I. The corresponding Section of Regulation II of 1065 was as follows :—

"569. *Application for review of judgment.*—Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is hereby allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is hereby allowed, or

(c) by a judgment on a reference from a Court in non-appealable cases,

and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him,

may apply for a review of judgment to the Court which passed the decree or made the order, or to the Court, if any, to which the business of the former Court has been transferred.

A party who is not appealing from a decree may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except when the ground of such appeal is common to the applicant and to the appellant, or when, being a respondent, he can present to the Appellate Court the case on which he applies for the review."

II. See Order XLV, Rule 1.

### Case Law.

**1.** When the Court thinks there are sufficient grounds for granting an application for a review, notice of such application should be given to the opposite party. If the Court decides to grant the review, an order granting the application with the reasons for granting the same should be recorded.— **1 T. L. R.,** *49.*

**2.** When a judgment-debtor's property is sold in public auction in execution of a valid subsisting decree of an Appellate Court, and a third party *bona fide* purchased it, the debtor cannot sue to set aside the sale by reason of the subsequent reversal of the decree upon review, but must look to the judgment-creditor for the value of the property sold.— **2 T. L. R.,** *95.*

**3.** "It cannot be treated as a universal rule that no point can be raised on an application for a review which has been already discussed and decided on the original hearing of the appeal, or that no new point which has not been raised on the hearing of the appeal, can be argued on the application for review. In each case, the Court to which the application is made must consider and decide whether a review is necessary to correct any evident error or omission, or is otherwise requisite for the ends of justice." (6 B. L. R., 126).—

**6 T. L. R.,** *73.*

Ref.—3 S. D., 295.

**4.** No review lies unless fresh and important matter appears to have been discovered, and no second review lies.— **2 S. D.,** *249.*

**5.** The plaintiff obtained a decree for money. Before an appeal against it was filed, the plaintiff applied to the Court which passed the decree to review it and award him future interest as well. An appeal was subsequently filed against the decree by the defendant, but was withdrawn. The application for review was subsequently heard and granted, thus awarding future interest as well. In appeal against the decree passed on review, it was contended, *inter alia*, that the first Court had no jurisdiction to interfere with its decree, as the same has been confirmed in appeal.

*Held.*—The first Court had jurisdiction. The order of the first Court, passed in the first instance, refusing to entertain the review on the ground of want of jurisdiction, was set aside in revision by the High Court, and the order of the High Court bound the defendant who was a party to the same.—

**3 T. L. J.,** *160.*

**6.** The mortgagee of 5/6th share in an undivided property sued for partition and recovery by metes and bounds of the share mortgaged to him. The defendant having contended, *inter alia*, that the plaintiff, a mortgagee, was incompetent to sue for partition, the plaintiff applied to amend the plaint so as to include a prayer for recovery of the mortgage amount charged on the mortgaged property. This application was rejected, and the suit also was, after some time, dismissed on the ground that the plaintiff being only a mortgagee was not competent to sue for partition. In the meantime, the order refusing leave to amend plaint was appealed against, and the High Court, in their revisional jurisdiction, set aside that order. The suit had been dismissed before the High Court pronounced decision. The lower Court restored the suit to its file again, revoking the decree dismissing the suit, on the ground that the High Court's decision had the effect of vacating the decree of the lower Court dismissing the suit,—

*Held.*—(1) The Judge had acted without jurisdiction.

It is clear law that without a petition for review or an order from a superior Court, no Judge has jurisdiction to pronounce fresh judgment when there is already a valid judgment in the case passed by his Court.

(2) The mere presentation of a revision petition against the order of a lower Court did not make it necessary for the Court to stay the proceedings.—**31 T. L. R.,** *61*
(**= 5 T. L. J.,** *352*).

**7.** Though the phrase "for any other sufficient reasons" occurring in Section 569 C. P. C. has to be liberally construed, it will not cover allegations imputing to the Court oversight of or in-advertence to questions of fact which in themselves constitute but links in the chain of reasoning.

When the order admitting the review and the second judgment are set aside, the parties are relegated to the position occupied by them before the date of the order admitting the review, and the party who is prejudicially affected, by the setting aside of a judgment based on an order improperly admitting a review, will not be allowed to support such judgment in appeal preferred by his adversary.

The word "shall" in "shall record with his own hand his reasons for such opinion" in Section 572 C. P. C. is mandatory. When the same word occurs more than once in one and the same Section of a statute, the Legislature must be presumed to have used that word in the same sense, unless there is plain indication to the contrary in the context.— **12 T. L. J.,** *53*.

**8.** There is nothing in Section 569 which would prevent the party aggrieved from presenting a petition for review and asking the Court to give its opinion on a question of law which was not dealt with by the Court through oversight.

The point was urged at the hearing of the case but it was, by oversight, not considered by the Court. This was sufficient reason for granting a review (F. B.).—
**38 T. L. R.,** *297*
(**=12 T. L. J.,** *359*).

**9.** It is clear law that, where an application for review has been presented by a party to the suit, and an appeal is afterwards preferred from the same decree, whether by the same party or by the other party to the suit, the Court to which the application for review is made is not thereby deprived of jurisdiction to entertain the application. That power, however, exists only so long as the appeal is not heard : for, once the appeal is heard, the decree on appeal is the final decree in the case and the application for review of judgment cannot be proceeded with. If the application for review is granted and a new decree is passed, the appeal cannot be heard and it must be dismissed, because the decree appealed from is superseded by the new decree.

An application for review of judgment may pass through three stages. The Court has, in the first instance, to satisfy itself that the application is based *prima facie* on grounds contemplated by law and is presented within time to a Judge who has jurisdiction to admit it. If so satisfied, the Court issues a rule to the opposite party to show cause against the application ; while, if not so satisfied, the Court rejects the application forthwith. The next stage is reached when the opposite party appears to show cause. Here, again, the Court may either discharge the rule or make the rule absolute by admitting the application. The third stage is the final one. It is then that the matter is re-opened and heard afresh on the merits. The Court may thereupon either dismiss the application or grant it partly or wholly with reference to the soundness of the grounds urged in support of the review. Very often, however, the distinction between the second and third stages is not observed in practice. The review may be admitted and granted at the

same hearing, if the grounds of the application do not necessitate a detailed examination and scrutiny of the record.—

16 T. L. J., *481.*

**10.** The judgment of the High Court passed under the Succession Certificate Regulation is reviewable under Section 88 and Order XLV, C. P. C., like the judgment under the Code.— 18 T. L. J., *65.*

**11.** It is highly essential that there should be a finality in the trial of cases, and the greatest care ought to be bestowed in granting a review, especially on the ground of discovery of fresh evidence, as by any laxity herein the door may be thrown open to all kinds of abuses. "It is so easy to the party who has lost his case to see what the weak part of his case was, and the temptation to try and procure evidence which will strengthen that weak part and put a different complexion upon that part of the case must be very strong." To invoke the aid of this part of the Section [569 corresponding to Or. XLV, r. 1], it is essential for the party to make out clearly (1) that the evidence relied on is (*a*) new, and (*b*) important, and (2) that after the exercise of due care and diligence the same (*a*) was not within his knowledge or (*b*) could not be produced at the time the decree was passed. The Court disposing of the application for review has to adjudicate specifically upon all the above points. Considering the nature of the provisions contained in the Code, it is doubtful whether a subsequent event could be treated as new matter or evidence within the meaning of this Section (569) for purpose of review. It has to be remembered that the aid of the Court is invoked on the basis that the decision in the case was incorrect as it stood then. In this view, the new evidence or matter contemplated in this provision should necessarily relate to those that were in existence at the date of the decree and not those that came into existence thereafter. The evidence adduced should, besides being new and important, be "such as is presumably to be believed, and, if believed, would be conclusive". The evidence, if adduced, must practically conclude the case and require a decision in favour of the petitioner to be passed in the case. —18 T. L. J., *1175.*

**12.** An application does not lie for restoration of an appeal rejected for non-payment of advance printing charges. The remedy available to the appellant in such a case is that of review.

The Code enables the Court disposing of an appeal to disturb its orders relating thereto only in three sets of cases. In the first place, a right to apply for restoration is allowed under Rule 18 of Order XL in cases of dismissal under Rules 16 and 17 of that Order or under Rule 10 in cases of rejection for default to furnish security for costs. The other remedy provided for is that under Section 88 read with Order XLV, Rule 1, allowing a right of review. This latter remedy will be clearly available to appellants in cases like the present.—

18 T. L. J., *1210.*

**13.** Both upon a construction of Section 569 and also on principle, it has to be held that it is undesirable to allow applications for review where compromise decrees are attacked on the ground that consent was obtained through fraud, undue influence or mistake or misrepresentation and that the remedy of the party lies by way of a separate suit.— 19 T. L. J., *643.*

**14.** Orders passed by the trial Court from time to time in purely interlocutory matters, such as the order to examine a witness or to take a plan of the disputed property are not matters subject to review. The provisions of the Civil Procedure Code relating to reviews apply only to orders which satisfy the definition of an order in Section 2 of the Code. Such an order must be a decision, *i. e.*, decision of a case or any part of a case.

19 T. L. J., *865.*

89. The High Court may call for the record of any case decided in any Court subordinate thereto, in which no appeal lies, for the purpose of satisfying itself as to the legality of any judgment, decree or order passed therein and as to the regularity of any proceedings of such inferior Court, and pass such order in the case as the High Court thinks fit.

Revision

15. See also—

Sec. 112.— **17 T. L. J.**, *441*.
Or. IX, r. 9.—**16 T. L. J.**, *71*.
„ r. 13.—**16 T. L. R. App.**, *29*.
„ XXI, r. 65.— **K. P.**, *260*.
„ „ r. 89.— **2 S. D.**, *269*.
„ XXII r. 8.— **17 T. L. R. App.**, *20*.
„ XXVII, r. 2.— **30 T. L. R.**, *197* (=**4 T. L. J.**, *238*).
„ XLV, r. 2.— **3 T. L. R.**, *20*. **40 T. L. R.**, *26* (=**13 T. L. J.**, *210*).
„ „ r. 4.— **2 S. D.**, *271*.

**Sec. 89** [ = S. 568 =*S. 115*]

I. This Section is the same as Section 568 of Regulation II of 1065.

II. Section 115 of the British Indian Code is as follows:—115. The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit."

The original Bill adopted the above wording, in place of Section 568 of the old Code; and the Notes on Clauses said:—

"Beyond altering the wording of the present Section, and conferring power to interfere when anything is done in excess of jurisdiction, or when there is refusal to exercise jurisdiction, the Section does not confer any new power, or take away any. The Section is as wide as it ought to be."

But the Select Committee considered it better to retain the wording of Section 568 of the Regulation, and substituted that Section for the one in the Bill.

III. It may be noted that Section 622 of the 1882 Indian Code which is reproduced, with little alteration, as Section 115 of the present Indian Code corresponds with Section 568 of the old Regulation. In adopting the Indian Section 622 for Regulation II of 1065, it was observed:—

"Section 622 being somewhat ambiguous and having given room to a conflict of decisions in British India, is re-enacted so as to empower the High Court to revise, in non-appealable cases, proceedings of all the lower Courts as to the legality or otherwise of their proceedings."—*S. O. & R., Para 78.*

IV. 1. "If there is one power which it is of the first importance that this Court (the High Court) should possess, it is the power of sending for the record in civil cases where no appeal lies. Experience shows that in a very great many such cases grave illegalities and material irregularities in the

proceedings of the Courts below exist, and it is essential that in such cases the High Court should have the power of interference." (8 All., 111). Further, it will be remarked that our Section, unlike the British Section 622 gives the same powers of revision in civil cases as are provided in Criminal cases by Section 329 of our Criminal Procedure Code, to correct illegalities and irregularities of procedure.—

**14 T. L. R., App.,** *22.*

**2.** The language of Section 568 materially differs from that of the corresponding Section of the British Indian Code, *viz.*, Section 622 of Act XIV of 1882 and Section 115 of Act V of 1908. It seems to us that the power conferred under Section 568 of our Code is wider than what is conferred by the corresponding Section of the British Indian Code.— **33 T. L. R.,** *23.*

**Case Law.**

**1.** A District Judge granted an injunction under Section 472 C. P. C. [=Or. XXXVII, r. 2], in reversal of the order passed by a District Munsiff. When an application for revision of the Judge's order was made by the first defendant, the petitioner, under Section 568 of the C. P. C., the counter-petitioner opposed it on the ground that the first defendant's remedy lay under Section 475 or 560 [ = Or. XXXVII, r. 4 or new Section 83 (1)], but not under Section 568 of the C. P. C.

*Held.*—(1) Section 475 could not help the petitioner as the application for cancellation therein intended must, according to the context, be made to the original Court and that Court has no power to cancel the order of the District Court. As to Section 560 if the validity of the order could be brought to the notice of the Appellate Court only when the whole case comes on appeal, the petitioner will be practically remedyless, even if the Appeal Court dismissed the suit on the merits, while on the other hand, the counter-petitioner would practically obtain all the relief that he asks, *i. e.*, the injunction in the plaint without proving his case on the merits.

To prevent grave and irreparable loss, the interference of the High Court under Section 568 was necessary in the interest of justice and the word "case" in that Section would cover an interlocutory order passed during the progress of a suit and the phrase "records of any case" occurring in the same Section would include so much of the proceedings in a suit as related to the interlocutory order.

(2) A District Judge should, before granting an injunction in reversal of a District Munsiff's order, satisfy himself that *prima facie* the suit was within the cognisance of the District Munsiff.

(3) As the suit in question was for declaration of a trust, the purpose and object of which were not definite enough to warrant a decree for specific performance, the District Judge was wrong in granting the injunction.— **14 T. L. R. App.,** *22.*

**2.** The Munsiff set aside the orders dismissing two suits for absence of plaintiffs and ordered notices to the opposite parties, though he ought to have previously given such notices as required by the second para of Section 98 C. P. C. [=Or. IX, r. 9]. The defendants thereupon prayed for revision of the said orders.

It is inadvisable to interfere in revision against interlocutory orders in pending suits seeing that such revisions might be rendered useless owing to the ultimate decree being in favour of the parties affected by such interlocutory orders. Again why should the trial of a case be hampered by revision petitions against every interlocutory order when the party affected by such order can raise the contention in the appeal preferred against the final decree? [See Section 560 C. P. C.=New Section 83 (1)].

The purpose with which Section 568, C. P. C., is framed is to get a decision or order rectified by the High Court where there would otherwise be no remedy.

The High Court does not usually interfere in revision even if an irregularity has happened in the lower Court if the net result of the order passed irregularly has been to promote the justice of the case.

In the case, the lower Court in passing orders for the restoration of the suits did not use its discretion so improperly as to induce the High Court to exercise its extraordinary powers of revision.— K. P., *236*.

Fol.—30 T. L. R., 68
(= 12 T. L. J., 371).

**3.** On revision, the High Court ordered that the District Judge's observations which were not necessary for the disposal of the appeal before him should be expunged from the record.— K. P., *271*.

**4**, An application by the petitioner, a Kudiyan, to deposit Michavarom in Court, was opposed by the Jenmi, counter-petitioner. The Jenmi's objections were overruled, and the petitioner was allowed to deposit Michavarom. The Jenmi applied for revision of this decision.

*Held.*—No revision lay, as Section 31, Clause 4, of the Jenmi and Kudiyan Regulation gave a right to any party affected by an order passed under that Section to contest the validity of the order by a regular suit.

The current of decisions in this Court has been to hold that where the law has prescribed a particular remedy for any error or irregularity appearing in any order sought to be revised, that remedy ought, *as a general rule*, to be pursued.

"Where a decree or order of a subordinate Court is declared by the law to be, for its own purposes, final or conclusive, though in its nature provisional, as subject to displacement by the decree in another more formal suit, the Court will have regard to the intention of the Legislature that promptness and certainty should, in such cases, be, in some measure, accepted instead of judicial perfection. It will rectify the proceedings of the inferior Court when the extrinsic conditions of its legal activity have been plainly infringed: but, where the alleged apparent error consists in a misappehension of evidence or misconstruction of the law, intrinsic to the enquiry and decision, it will respect the intended finality and will intervene peremptorily only when it is manifest that by the ordinary and prescribed method an adequate remedy or the intended remedy cannot be had." (7 Bom., 341.)— 2 T. L. J., *280*.

**5.** It is competent for the High Court to revise under Section 568 of the Code of Civil Procedure any illegal or other order of the Land Acquisition officer which he had no authority to pass under the terms of the Land Acquisition Regulation and against which no remedy by way of appeal has been provided by the law, on the ground that the Land Acquisition Officer is a Court subordinate to the High Court within the intendment of Section 568, C. P. C. (C. R. P., 149 of 1088) (F. B.).—

30 T. L. R., *197*
(=4 T. L. J., *238*).

**6.** When a suit is not dismissed on the ground of erroneous valuation, the plaintiff is not entitled to challenge by means of a revision petition the order of the lower Court directing him to pay court fees on the market value of the property which he seeks to recover. Granting for the sake of argument that the High Court is competent under Section 568 to revise an interlocutory order passed by a subordinate Court under Section 10 of the Court Fees Regulation, the order of the lower Court, in the case, did not seem to be so erroneous as to induce the High Court to interfere with it.

6 T. L. J., *60*.

Ref.—18 T. L. J., 52.

**7.** Orders rejecting review applications are open to revision under Section 568, C. P. C. The use of the word "final" in Section 575 [= Or. XLV, rr. 7 & 9] does not necessarily imply that the intention of the

Legislature should be taken to be that such orders are not liable to be interfered with even in revision. There is nothing in the language of Section 568 to suggest that the powers conferred thereunder should not be exercised in the case of orders passed by subordinate Courts in rejecting review applications presented to them. Section 575 has to be read with Section 568, and so read Section 575 simply bars reviews and appeals and not revisions.

Where an application for review of judgment covers only a portion of the relief claimed in the plaint, the court fee payable on such application should be calculated not on the entire value of the original plaint but only on the relief which would be obtained if the review were granted.— **33 T. L. R.**, *23*.

**8.** Counter-petitioner, a Mahomedan, applied to the District Judge for permission to sue *in forma pauperis*. It was opposed by petitioner (counter-petitioner's father's brother) on the ground that he was not a pauper, being entitled to his legal share in some of the properties involved in the proposed suit and he could encumber such share and raise the money requisite for paying the court fees. The District Judge holding that the counter-petitioner who is not in possession of his family properties could not be compelled to pledge his share and raise money, granted permission to sue *in forma pauperis*. On revision to the High Court, it was contended for the counter-petitioner that the order sought to be revised being an interlocutory order, the High Court was not competent to revise the same.

*Held*.—The order of the District Judge must be taken to be an adjudication in respect of the matters dealt with thereunder and is therefore properly revisable by the High Court under Section 568, C. P. C.

*Palpu Pillai, J.*—So far as the enquiry into pauperism which is regulated by the provisions of Sections 388 to 394, C. P. C., [ = Or. XXXIII, rr. 2 to 7 ], is concerned, it must be deemed to be a 'case' within the meaning of Section 568, C. P. C., and it makes no difference for the purposes of revision that the order eventually passed is one rejecting or granting the application.

A pauper being one who is not possessed of sufficient means to enable him to pay the fees prescribed by law for the plaint, the District Judge should dispose of the application after taking evidence as to the sufficiency or otherwise for the purpose of the required court fee, of the properties belonging to the counter-petitioner.

*Per Raman Tampi, J.*—There is no ground for holding that an enquiry into the pauperism of a petitioner is not in itself a 'case'. In this view, the refusal of an application for permission to sue *in forma pauperis* is as much a decision as the granting of a similar application and the mere circumstance that the latter event is followed by the registering and numbering of a regular suit does not make it less effectual as a decision of a particular case or the termination of the particular proceeding.

The words 'possessed of sufficient means' ought to be so construed as to cover not merely cases of actual physical possession but also cases of legal possession and undisputed claims. The counter-petitioner's undisputed claims to the properties is in law equivalent to possession of sufficient means to enable him to pay the prescribed Court fees; but the Court below should take evidence and decide as to the sufficiency of such means.— **34 T. L. R.**, *178*.

Ref.—37 T. L. R., 102
(=11 T. L. J., 300).
Affirmed.—37 T. L. R., 138.

**9.** Section 568 which provides for revision by the High Court, is very wide in its terms. Under the Section, the High Court can, of its own motion, call for any record for the purpose of satisfying itself as to the legality of any judgment, decree or order passed in any case, and it is not necessary for the exercise of its powers of revision that

it shall be put in motion by the party aggrieved.— **10 T. L. J.,** *172.*

Ref.—19 T. L. J., 691.

**10.** Against an award of the Land Acquisition Officer, the claimant applied within the time limited by Section 18 of the Land Acquisition Regulation requiring him to make a reference to the Civil Court under the Section. The objection was both in regard to the extent of the acquisition and the amount of compensation.

*Held.*—The Land Acquisition Officer should have referred the objection to the Civil Court, and the reference should be made under Section 18 instead of under Section 27 of the Land Acquisition Regulation.

In rejecting an application made under Section 18 of the Land Acquisition Regulation asking for a reference to the Civil Court, the Land Acquisition Officer acts judicially and his order is subject to revision by the High Court.

Strictly speaking, the appellant in the case should have invoked the revisional powers of the High Court when he found that the Land Acquisition Officer made the reference under Section 27, and he could have thus avoided the trouble and the expense of the enquiry before the District Court and the expenses of the appeal in the High Court.— **36 T. L. R.,** *12.*

**11.** Plaintiff-petitioner's prayer for amendment of the plaint was refused by the Munsiff. He appealed against the Munsiff's order to the District Judge who returned the appeal for presentation to the proper Court. The appeal was accordingly presented to the High Court.

At the time of hearing, the High Court acceded to the appellant's prayer and treated the appeal as a revision petition, having regard to the fact urged that the order of the Munsiff was bad on the face of it and that injustice was likely to be done to the plaintiff if the order was to be left uninterfered with at this stage.—

**36 T. L. R.,** *118*
(= **10 T. L. J.,** *246*).

**12.** Interlocutory orders may form the subject of revision, if the matter they relate to stands by itself and in which the ends of justice would be defeated if the power of revision is not exercised.

The records had, by an order of the Court, been called for and there could be no doubt that, having regard to the generality of the terms of Section 568, the High Court could pass in such a case any order, whether in regard to fact or law, that it might think proper for the purposes of the justice of the case.

The primary consideration on which the Court will act in the exercise of its revisional powers is whether the ends of justice require its interference in the circumstances of any particular case brought to its notice; and when it has decided that the record should be called for, it is competent under Section 568 to examine the records and make such order as in its view the justice of the case requires.—

**38 T. L. R.,** *203*
(=**12 T. L. J.,** *206*).

Dist.—39 T. L. R., 63
( = 12 T. L. J., 371).

**13.** The High Court can under Section 568, C. P. C., call for the records of a case from a lower Court and expunge unnecessary remarks, even though it was not moved by a revision petition. Even otherwise, the Court has inherent jurisdiction to amend or rectify judgments and orders of inferior Courts, whenever such a course is deemed expedient in the interests of justice and fairness. There is no period of limitation prescribed by any law for the exercise of this jurisdiction and it is not necessary that the Court should require any person to show cause why an appropriate order should not be made.— **14 T. L. J.,** *183.*

14. The assessee was the Imperial Bank of India, Alleppey Branch. The assessment was objected to on the ground that a portion of the income was exempt from taxation, and an appeal accordingly was presented to the Chief Revenue Authority. He confirmed the assessment of the Collector of Income-tax, and refused to state a case for the opinion of the High Court as prayed for by the assessee.

The Sirkar contended that the High Court is not competent to exercise its jurisdiction in the case and that it cannot interfere with the Chief Revenue Authority's decision.

*Held.*- (1) The proceedings of the Income-Tax Commissioner are judicial proceedings, and the Commissioner is for the purpose of the judicial proceedings a Judge, that is to say, the presiding Officer of a Court, and as such the Chief Revenue Authority is a Court subordinate to the High Court.

(2) The High Court does not act in the exercise of its original jurisdiction when it orders the Chief Revenue Authority to make a reference under Section 50 of the Income-Tax Regulation and the High Court is competent to make such an order when the Chief Revenue Authority rejects the assessee's application in that behalf (F. B.).— **42 T. L. R.**, *174* (=**15 T. L. J.**, *394*).

15. The High Court has jurisdiction to entertain a revision from an order of the Munsiff refusing to accept an application made under Section 27 of the Jenmi and Kudiyan Regulation to deposit Michavarom and Onakalcha by a person claiming to be the Kudiyan of the counter-petitioner.

Section 568 invests the High Court with a wide jurisdiction over decisions in cases which are not appealable. An application to deposit Michavarom is a case within the meaning of this Section, as the Munsiff has to exercise judicial discretion in granting leave to deposit, and it is certainly not appealable. However, the powers of the High Court should be exercised very sparingly in such cases.— **15 T. L. J.**, *481*.

16. The High Court can interfere in revision with an order passed under Section 98 [= Or. IX, r. 9] or any other order against which an appeal does not lie. There is no hard and fast rule as regards the finality or otherwise of interlocutory orders, and the rule laid down in some of the decisions that the High Court will not interfere is not an absolute rule of law, but a wise rule of practice by which the High Court limits its interference to those occasions in which it is absolutely necessary. Where an interlocutory order is tainted by illegality, if it is one made without jurisdiction or in direct contravention of the provisions of law, it is not proper to say that the High Court should decline to disturb in revision on the single ground that it is an interlocutory order. On the other hand, if the order is merely irregular, the petitioner has his remedy in the fulness of time when perchance the whole case comes up before the High Court on appeal.

The function of the High Court when it exercises its revisional powers is to act in aid of justice.

There are two guiding principles which have to be kept in view :—(1) The power of revision will be exercised to correct gross and palpable errors and manifest illegality, to remedy irreparable wrong and to prevent gross injustice, and when the decision is perverse and there was a conscious or material departure from some rule of law or procedure. (2) The power of revision will not be exercised when equally efficacious remedy is open to the parties by way of appeal or fresh suit. When the remedy is by filing an appeal, it is more quickly obtained than when the remedy is by a fresh suit.

Section 560 [new Section 83 (1)] cannot be a bar to the power of revision under Section 568. Section 560 does not provide for an appeal from the order impeached. It provides a means to attack the order only in an indirect way and the means may not

be effective. The remedy by way of objection from the final decree that may be passed is not always available or may be ineffectual. It is possible to think of extreme cases where the special remedy by appeal is inapplicable or ineffectual and the High Court in the exercise of its jurisdiction may interfere in such cases.

The right to impeach the interlocutory order in an appeal against the final decree allowed under Section 560 is illusory because under Section 547 [new Section 78] the Appellate Court will not be justified in reversing or varying the decree or remanding the case on account of any error or irregularity not affecting the merits of the case (F. B.).— **41 T. L. R.,** *257*
**(=16 T. L. J.,** *29***).**

Ref.—18 T. L. J., 1258.

**17.** Though the High Court can *suo motu* examine the propriety of orders of lower Courts in revision, it cannot do so with orders from which appeals are competent.

As an order rejecting an application for amendment of plaint can be attacked in an appeal against the final decree that might be passed in the case under Section 83 (1), the High Court cannot revise such order.— **17 T. L. J.,** *125.*

Ref.—18 T. L. J., 52.

**18.** Under Section 89, the High Court can interfere only if (1) the case has been decided already, and (2) no appeal lies against that decision, and (3) where there has been an irregularity of procedure in the proceedings of the subordinate Court.

Proceedings which are not suits, such as applications under the Religious Endowments Act and the like could be considered to be cases under the Code. But if the proceedings in question relate to suits as ordinarily understood, the expression "cases" has to be taken as synonymous with suits. If a contrary view is taken, interference by the High Court in revision would be practically ousting the jurisdiction of the proper Court of appeal constituted by the Legislature to which has been entrusted the duty of reviewing the decision of the trial Court.

Consistently with the above construction of the word "case," no revision would lie with respect to an order in a pending case. Nor will a revision be competent when the petitioner has the right to impeach such order by means of an appeal or a regular suit. Section 83 (1) permits the error, defect or irregularity affecting decisions in the case to be objected to in appeal.

In order that there may be irregularity in procedure, there must have been a distinct burking of the issue or a refusal on the part of the Court to follow a statute of the Legislature which goes to the root of the case.— **17 T. L. J.,** *255.*

Ref.—18 T. L. J., 52.

**19.** Though orders passed under Section 10 of the Court Fees Regulation cannot be characterised as 'cases', as contemplated by Section 89, the High Court can revise such orders when the ends of justice require it to be done.

The finality contemplated by Section 10 of the Court Fees Regulation cannot be attached to the decision of the class or category under which the case in hand could be brought.

The burden of proving that the market value of the property was not that stated in the plaint but an amount in excess of the same is upon the party alleging it.— **18 T. L. J.,** *52.*

**20.** Any rule restricting revision can only be meant as a guide to the High Court in exercising its powers of revision which are very wide. In cases where the High Court is satisfied that any order of a subordinate Court is clearly wrong, the High Court may deal with it in revision.— **18 T. L. J.,** *1253.*

## PART IX.

### Rules.

Effect of Rules in First Schedule.

90. The Rules in the First schedule shall have effect as if enacted in the body of this Code until annulled or altered in accordance with the provisions of this Part.

---

21. See also—
Sec. 2. (2)— **K. P.**, *247*.
„ 59.—**2 T. L. J.**, *282*.
**31 T. L. R.**, *94*.
**42 T. L. R.**, *22*
(=**17 T. L. J.**, *666*).
„ 78.—**19 T. L. J.**, *383*.
„ 88.—**31 T. L. R.**, *61*
(=**5 T. L. J.**, *352*).
„ 115.—**44 T. L. R.**, *148*
(=**18 T. L. J.**, *1007*).
„ 116.—**28 T. L. R.**, *168*.
Or. I, r. 10 (2) & (3).—
**1 S. D.**, *342*.
**15 T. L. J.**, *226*.
„ IX, r. 7.—**2 S. D.**, *247*.
„ „ r. 13.—**15 T.L.R. App.**, *56*.
**16 T.L.R.App.**, *29*.
**17 T. L. R. App.**, *1*.
**39 T. L. R.**, *63*
(=**12 T. L. J.**, *371*).
Or. XVII, r. 1.—
**19 T. L. R.**, *82*.
„ XX, r. 4.—
**32 T. L. R.**, *235*.
„ XXI, r. 50.—
**28 T. L. R.**, *209*
(=**3 T. L. J.**, *169*).
„ „ r. 56.—
**6 T. L. J.**, *151*.
„ „ r. 61.—**K. P.**, *95*.
**9 T. L. J.**, *237*.
„ „ r. 67.—
**16 T. L. R. App.**, *3*.
„ „ r. 94.—
**18 T. L. R.**, *157*.
„ „ r. 98.—
**29 T. L. R.**, *118*
(=**3 T. L. J.**, *439*).
**37 T. L. R.**, *52*
(=**10 T. L. J.**, *459*).
Or. XXIII, r. 1.—
**7 T. L. J.**, *6*.
„ XXXIX, r. 16.—
**9 T. L. J.**, *400*.
„ XLV, r. 7.—
**18 T. L. R.**, *167*.

---

**Part IX.**

1. *Sections 90 to 96.*—These Sections are new and are necessary to carry out the object of the division of the Code into Rules and Sections. The composition of the Committee set up is such as is expected to bring to bear expert knowledge on the subject, and make the Rules serve the object of all procedure, *viz.*, the speedy rendering of full justice."— *Notes on Clauses.*

2. The Select Committee in their Report observed :—

"After considerable discussion and mature consideration, we have come to the conclusion that the retention of the part relating to Rules is necessary as it enables the High Court to pass Rules only after they are passed by a Rule Committee consisting of Judges of the High Court and members of the Bar. We are, however, of opinion that the Council should have an opportunity of considering the Rules before they are passed by the Government."

3. The Indian Special Committee's observations also may be quoted.—"12. The distribution of the provisions of the Code between the body of the Bill and the Rules is a matter on which opinions may well differ. The general principle on which we have proceeded has been to keep in the

Power of High Court to make Rules.

91. The High Court may, from time to time after previous publication, and subject to the provisions hereinafter in this Part contained, make Rules regulating its own procedure and the procedure of the Civil Courts subject to its superintendence, and may by such Rules annul, alter or add to all or any of the Rules in the First Schedule.

Constitution of Rule Committee.

92. (1) A Committee, to be called the Rule Committee, shall be constituted at Trivandrum.

(2) Such Committee shall consist of the following persons, namely :—

(a) the Chief Justice and a Puisne Judge of the High Court who has served as a District Judge,

(b) two Vakils of the High Court, and

(c) the Head Sirkar Vakil.

(3) The Chief Justice shall be the President of the Committee, and he shall appoint the members of the Committee other than the Head Sirkar Vakil.

(4) Each member of such Committee other than the Head Sirkar Vakil shall hold office for such period as may be prescribed by the Chief Justice in this behalf; and whenever any such member retires, resigns, dies or ceases to reside in Travancore or becomes incapable of acting as a member of the Committee, the Chief Justice may appoint another person to be a member in his stead.

(5) There shall be a Secretary to such Committee, who shall be appointed by the Chief Justice and shall receive such remuneration as may be provided in this behalf by Our Government.

---

body of the Bill those provisions which appear to us to be fundamental. * * In some cases we have adopted the plan of inserting leading provisions in the Bill, stating in general terms the powers of the Court, and of leaving the details to Rules; in matters of less importance the provisions have been relegated altogether to Rules."

Sec. 90 [ = – = *S. 121* ]

Sec. 91 [ = S. 591 = *S. 122* ]

The corresponding Section of the old Regulation was as follows :—"591. *Power to make subsidiary Rules.*—The High Court may, from time to time, make Rules consistent with this Code to regulate any matter connected with its own procedure or the procedure of the Courts of Civil Judicature subject to its superintendence. All such Rules shall be published in the Official Gazette, and shall thereupon have the force of law."

93. Any proposal to annul, alter or add to the Rules in the First Schedule or to make new Rules shall be referred to the Rule Committee. Such Committee shall make a report thereon and the High Court shall before making the Rules, take such report into consideration.

Reference to Rule Committee.

94. The Rules made under the foregoing provisions shall be laid before the Legislative Council. The Legislative Council shall consider and deal with the Rules in the same manner as a Bill presented with the report of a Select Committee.

Rules to be laid before the Legislative Council.

95. (1) Rules made under the foregoing provisions shall be subject to the previous sanction of Our Government.

Rules subject to sanction.

(2) Rules so made and sanctioned shall be published in Our Government Gazette, and shall from the date of publication or from such other date as may be specified have the same force and effect, as if they had been contained in the First Schedule.

Publication of Rules.

96. (1) Such Rules shall be not inconsistent with the provisions in the body of this Code, but, subject thereto, may provide for any matters relating to the procedure of Civil Courts.

Matters for which Rules may provide.

(2) In particular, and without prejudice to the generality of the powers conferred by Sub-section (1), such Rules may provide for all or any of the following matters, namely:—

(*a*) the service of summonses, notices and other processes by post or in any other manner either generally or in any specified areas, and the proof of such service;

---

Sec. 92 [ = — = *S. 123* ]

Sec. 93 [ = — = *S. 124* ]

Sec. 94 [ = — = *S. 126* ]

Under the British Indian Code, the Rules have to be approved by the Government.

Sec. 95 [ = — = *S. 127* ]

Sec. 96 [ = — = *S. 128* ]

(*b*) the maintenance and custody, while under attachment, of live-stock and other movable property, the fees payable for such maintenance and custody, the sale of such live-stock and property, and the proceeds of such sale;

(*c*) procedure in suits by way of counter-claim, and the valuation of such suits for the purposes of jurisdiction;

(*d*) procedure in garnishee and charging orders either in addition to, or in substitution for, the attachment and sale of debts;

(*e*) procedure where the defendant claims to be entitled to contribution or indemnity over against any person whether a party to the suit or not;

(*f*) consolidation of suits, appeals and other proceedings; and

(*g*) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of Civil Courts.

---

## PART X.

### Miscellaneous.

Exemption of certain women from personal appearance.

**97.** (1) Women who, according to the customs and manners of the country, ought not to be compelled to appear in public shall be exempt from personal appearance in Court.

(2) Nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process in any case in which the arrest of women is not prohibited by this Code.

---

**Sec. 97** [ = S. 577 = *S. 132* ]

In the second Para of the corresponding Section of the old Regulation, the words "in any case in which the arrest of women is not prohibited by this Code" found in Sub-section (2) did not occur. These are taken from the British Indian Code.

98. (1) Our Government may, by Notification in Our Government Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of Our Government, entitles him to the privilege of exemption, and may, by like Notification, withdraw such privilege.

Exemption of other persons.

(2) The names and residences of the persons so exempted shall, from time to time, be forwarded to the High Court by Our Government and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court.

(3) Where any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission.

Where such person refuses to deposit the costs of the commission, the party requiring his evidence shall deposit such costs. The Court may, if satisfied that the evidence of the person is material, order the costs of such commission to be paid by such person to the party concerned and such order shall be executable as a decree.

---

**Sec. 98** [ = S. 578 = *S. 133* ]

I. Sub-sections (1) and (2) are the same as the first and second Paras of Section 578 of the old Regulation.

The third Para of Section 578 ran thus:—"When any person so exempted......he shall pay the costs of that commission *unless the party requiring his evidence pays such costs*". This was the wording of Sub-section (3) in the original Bill. But the Select Committee omitted the words italicised, and added to Sub-section (3) the new Para now found therein.

II. Section 133 of the British Indian Code runs thus:—"133. (1) The Local Government may, by Notification in the local Official Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption.

(2) The names and residences of the persons so exempted shall, from time to time, be forwarded to the High Court by the Local Government and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court.

(3) Where any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs."

III. See Order XXVI, Rule 1.

**Case Law.**

See Sec. 47.—17 T. L. J., *455*.

Arrest other than in execution of decree.

**99.** The provisions of Sections 47, 49 and 51 shall apply, so far as may be, to all persons arrested under this Code.

Exemption from arrest of persons serving in or with His Majesty's Army.

[**99-A.** Such persons serving in or with the Army of His Majesty the King, Emperor of India, as Our Government may, from time to time, specify by Notification in Our Government Gazette, shall not be liable to be arrested for debt under any process issued by, or by the authority of, any of the Civil Courts.

Inquiry into complaint of arrest.

**99-B.** The Judge of any of the Civil Courts may examine into any complaint made by any such person mentioned in Section 99-A or by his superior officer, of the arrest of such person contrary to the provisions of this Code, and may by warrant under his hand discharge such person.

Arms etc., of persons mentioned in Section 99-A not liable to seizure.

**99-C.** The arms, horses, clothes, equipment, regimental accoutrements and necessaries of any such person mentioned in Section 99-A shall not be seized nor shall his pay or allowances or any part thereof be attached in satisfaction of any decree obtained against him or any person whom he may represent.]

Exemption from arrest under civil process.

**100.** (1) No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his Court.

(2) Where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process other than process issued by such tribunal for contempt of Court while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

---

**Sec. 99** [ = — = *S. 134* ]

**Secs. 99-A, 99-B & 99-C.**

These three Sections reproduce Sections 334, 335 and 336 of Regulation II of 1065. These were inserted by Section 7 of Regulation III of 1101.

**Sec. 100** [ = S. 580 = *S. 135* ]

I. The corresponding Section of Regulation II of 1065 was as follows :—

"580. *Persons exempt from arrest under Civil process.*—No Judge, Magistrate or other judicial officer shall be liable to arrest

(3) Nothing in Sub-section (2) shall enable a judgment-debtor to claim exemption from arrest under an order for immediate execution or where such judgment-debtor attends to show cause why he should not be committed to prison in execution of a decree.

---

under Civil process while going to, presiding in, or returning from, his Court.

And, except as provided in Sections 252 and 581, where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders and recognised agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under Civil process while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal."

II. Sub-section (3) has been substituted for the words "except as provided in Sections 252 and 581" found in the second Para of the old Section given above.

III. In the Statement of Objects and Reasons for the 1901 amending Bill, it was observed :—"The wording has been amplified so as to make it clear that the exemption here conferred is not to be regarded as the priviege of the person attending the Court, but rather as that of the Court which he attends. If, therefore, a witness does not believe his attendance to be required or is arrested for contempt, there should be no privilege."— *India Gazette dated 21-12-1901, Pt. V.*

**Case Law.**

**1.** The first defendant in his capacity of First Judge issued a warrant for the arrest of the judgment-debtor, and third defendant (process peon) arrested him. Plaintiff interfered, took the debtor and led him to the Court of the Second Judge and obtained therefrom an order of discharge. The Judge ordered discharge on the ground that the debtor was a witness in a case pending before him. First defendant ordered prosecution of plaintiff for contempt of authority, but the Magistrate acquitted him. Plaintiff sued for damages for malicious prosecution against the First Judge and his subordinates.

*Held.*—It is a well-settled principle of law that no Judge is liable for damages for acts done by him within his jurisdiction, although he may have been actuated by most unworthy motives and malice.

As the arrest was made under the orders of the first defendant, the application for the release of the debtor on whatever ground it may be, must have been made to him. The Second Judge had clearly no power to cancel the orders of the First Judge. The plaintiff's application to the Second Judge and the order of discharge made by the latter were quite irregular and unauthorised.— **4 T. L. R.,** *26.*

Fol.— 15 T. L. R. App., 20.
14 T. L. J., 168.

**3.** The privilege accorded by Section 580, C. P. C., extends also to persons who are accuseds in criminal cases. The word "tribunal" used in that Section has to be taken in its ordinary sense, and there is nothing in the language of that Section to denote that persons who are accuseds in criminal cases should not be afforded protection if they satisfy the conditions laid down in that Section.

The policy of the Legislature underlying that Section is that voluntary appearances of parties, their pleaders and recognised agents and witnesses should be encouraged as this would result in speedy justice being administered to the public.— **8 T. L. J.,** *284.*

Fol.—17 T. L. J., 604.

**4.** The policy of the Legislature underlying Section 100, Clause (2) is that voluntary appearance of the parties, their pleaders and recognised agents and witnesses

Procedure where person to be arrested or property to be attached is outside district.

**101.** (1) Where an application is made that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situate outside the local limits of the jurisdiction of the Court to which the application is made, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

(2) The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court, which issued or made such warrant or order, of the arrest or attachment.

(3) The Court making an arrest under this Section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court, or for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him.

---

should be encouraged as this would result in speedy justice being administered to the public.

The fact that a judgment-debtor has been arrested under one decree does not exempt him from arrest under another.—

**17 T. L. J.,** *604.*

2. The words "for the purpose of such matter" in Section 580 are very wide and include also attendance for the purpose of giving evidence.

Though as a mere witness, the judgment-debtor was not privileged, he was privileged as a *party*, defendant in another case, who came to Court for "the purpose of such matter," and under a *bona fide* belief that his attendance was required for that purpose.—

**4 S. D.,** *355.*

**Sec. 101** [ = S. 585 = *S. 136* ]

I. This Section reproduces Section 136 of the British Indian Code.

II. Sub-sections (2) and (3) of the Section are the same as the second and third paras of Section 585 of Regulation II of 1065. In regard to Sub-section (1), the wording in the corresponding first para of Section 585 is as follows :—

"585. *Procedure when person to be arrested or property to be attached is outside the District.*—Where any Court desires that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or property is situate outside the local limits

**102.** Where this Code requires or allows anything other than the recording of evidence to be done in writing in any Court, such writing may be in English, but if any party or his pleader is unacquainted with English, a translation into the language of the Court shall, at his request, be supplied to him, and the Court shall make such order as it thinks fit in respect of the payment of the costs of such translation other than the costs of translation of a judgment.

Language of Courts.

**103.** In the case of any affidavit under this Code—

Oath on affidavit by whom to be administered.

(*a*) any Court or Magistrate, or

(*b*) any officer or other person whom the High Court may appoint in this behalf,

may administer the oath to the deponent.

---

of its jurisdiction, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate, a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment."

**Case Law.**

A Court before which a suit is filed has power to order attachment before judgment, of property situate within the jurisdiction of another Court.

*Per the Chief Justice.*—In such a case the procedure to be adopted should be that laid down in Section 585, C. P. C.

Even if no express power is given under the Code, Courts have inherent jurisdiction to pass all necessary orders to see that their decrees do not become infructuous ultimately.— **24 T. L. R.,** *191.*

**Sec. 102** [ = Secs. 543 & 544 = *S. 137 (3)*]

I. This Section reproduces Sub-section (3) of Section 137 of the British Indian Code, except that the words at the end—"other than the costs of translation of a judgment"—do not occur in that Code. These words were not in the original Bill, but were added by the Select Committee.

II. Sections 543 and 544 of Regulation II of 1065 were as follow :—

"543. *Language of judgment.*—The judgment shall be written by the Judge in his own hand in the language of the Court or in English :

Provided that the judgments of the High Court and the District Courts need not necessarily be in the handwriting of the Judges."

"544. *Translation of judgment.*—When the language in which the judgment is written is English, the judgment shall, if any party so require, be translated into Malayalam, and the translation, after it has been ascertained to be correct, shall be signed by the Judge or such officer as he appoints in this behalf."

Assessors in causes of salvage, etc.

104. (1) In any cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may, if it thinks fit, and shall, upon request of either party to such cause, summon to its assistance, in such manner as it may direct or as may be prescribed, two competent assessors; and such assessors shall attend and assist accordingly.

(2) Every such assessor shall receive such fees for his attendance, to be paid by such of the parties as the Court may direct or as may be prescribed.

Miscellaneous proceedings.

105. The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

---

Sec. 103 [= S. 192 = *S. 139*]

I. This Section reproduces Section 139 of the British Indian Code which has also another Clause as follows:—"(c) any officer appointed by any other Court which the Local Government has generally or specially empowered in this behalf."

II. 1. The corresponding Section 192 of Regulation II of 1065 was as follows:—

"192. *Oath of declarant by whom to be administered.*—In the case of any affidavit under this Code—

(a) any Civil Court or Magistrate,

(b) any officer specially empowered in this behalf by the High Court,

may administer the oath of the declarant."

2. The words "or other person" were inserted in Clause (b) of the Rule in the Indian Code, by the Special Committee, "in order to give the High Court power to relieve the Officers of the Courts of the work of administering affidavits in cases in which it may be necessary to do so."

---

Sec. 104 [= S. 583 = *S. 140*]

---

Sec. 105 [= S. 584 = *S. 141*]

I. The corresponding Section of Regulation II of 1065 was as follows:—

"584. *Miscellaneous proceedings.*—The procedure herein prescribed shall be followed, as far as it can be made applicable, in all proceedings in any Court of Civil jurisdiction, other than suits and appeals.

*Admission of affidavits as evidence.*—The High Court may, from time to time, make Rules to provide for the admission, in such proceedings, of affidavits as evidence of the matters to which such affidavits respectively relate; and such Rules, on being published in the Official Gazette, shall have the force of law."

II. It may be noted here that Section 584 of the old Regulation was the same as Section 647 of the Indian Code of 1882. The latter Section was later amended by Act VI of 1892 which added the following Explanation:—"*Explanation.*—This Section does not apply to applications for the execution of decrees which are proceedings in suits."

Case Law

1. Where an appl[illegible] of a decree was post[illegible] for hearing of an o[illegible]

was dismissed for default of judgment-creditor's appearance, and a second application was opposed on the ground that, as in the previous application, the burden of proof to rebut the objection was cast on the applicant, its rejection, even though on the ground of default, must be taken to be equivalent to a finding that the objection was valid :

*Held.*—As the *onus probandi* did not entirely rest and was not expressly cast by the Court upon the judgment-creditor, and the objectors did not adduce evidence in support of their allegation, the rejection of the first application cannot be taken otherwise than as a dismissal on the ground of default of appearance.

The rejection, for default, of an application for execution of a decree does not, by force of Section 584, debar subsequent applications. That Section does not extend to miscellaneous proceedings all the provisions relating to suits, but only such as can be safely applied to them; and the law expressly recognizes repeated applications for execution.— **12 T. L. R.**, *155.*

**2.** Section 584 (Paragraph 1), C. P. C., should not be so construed as to make the procedure laid down in Chapter VII, Sections 90 to 104 [=Order IX] of the Code always applicable to all execution proceedings. It is a well-established practice that when an application for the execution of a decree is dismissed for default it is open to the decree-holder to make another application for the same purpose even without following the procedure laid down in Section 98 [ = Or. IX, r. 9]. This one circumstance is sufficient to place one on one's guard against accepting the proposition that the effect of Section 584 is that the provisions in Chapter VII should be adopted in their entirety to all execution proceedings.

...poken of in Section 584 ...ts in the nature of ...gs in probate, guardianship and so forth, and do not include executions.— **35 T. L. R.**, *75.*

Fol.—19 T. L. J., 868.
Ref.—19 T. L. J., 920.

**3.** Section 584, C. P. C., enables the execution Court to apply the procedure laid down in Section 381 [=Or. XXVI, rr. 13 and 14] for the partition of immovable property, when the execution Court is moved to execute a decree for partition.

[It was contended that the decree passed in the suit was only a preliminary decree ascertaining the several parties interested in the schedule properties and their several rights therein, and that the order made in the execution Court was the final decree for the partition of the properties, and that for the purpose of passing this final decree, the Court was competent to follow the procedure prescribed in Section 381. It would be straining to some extent the language of the decree to say that it was merely a preliminary decree ascertaining the rights of the parties. It directs the properties to be divided into equal shares and allows the recovery of one-half of the properties by the plaintiff. Such decrees have been treated as final decrees and proceedings taken thereon for ascertainment of the actual shares by metes and bounds, as proceedings in execution, by the practice of the High Court. How far this Rule of practice is correct, it is not necessary to examine for the purpose of the case. In the case, the decree was treated as a final decree].— **15 T. L. J.**, *518.*

**4.** See also -

Or. IX.— **19 T. L. J.**, *363.*
" r. 4.—**8 T. L. R. App.**, *40.*
" r. 9.—**13 T. L. J.**, *353.*
Or. XX, r. 4.—**28 T. L. R.**, *53* (=**3 T. L. J.**, *25*).
" XXIII, r. 3.— **18 T. L. J.**, *359.*
" XXXVII, r. 2.— **26 T. L. R.**, *162.*

106. All orders and notices served on or given to any person under the provisions of this Code shall be in writing.

Orders and notices to be in writing.

107. Postage, where chargeable on a notice, summons or letter issued under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed before the communication is made.

Postage.

108. (1) Where and in so far as a decree is varied or reversed, the Court of first instance shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed; and, for this purpose, the Court may make any orders, including orders for the refund of costs and the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal.

Application for restitution.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under Sub-section (1).

---

Sec. 106 [ = S. 88 = *S. 142* ]

I. This Section reproduces Section 142 of the British Indian Code.

II. Section 88 of Regulation II of 1065 was as follows :—"88. All notices and orders required by this Code to be given to or served on any person shall be in writing, and shall be served in the manner hereinbefore provided for the service of summons."

See Order XLVI, Rule 2.

Sec. 107 [ = S. 89 = *S. 143* ]

I. In the British Indian Code, power is given to the Local Government to remit such postage or fee or both, and also to prescribe a scale of Court fee to be levied in lieu thereof.

II. The old Section has at the end the wording—"before the communication is *forwarded*."

Sec. 108 [ = S. 552 = *S. 144* ]

I. The corresponding Section in Regulation II of 1065 was as follows :—

"552. *Execution of decrees of Appellate Court.*—When a party entitled to any benefit (by way of restitution or otherwise) under a decree passed in an appeal under this Chapter desires to obtain execution of the same, he shall apply to the Court which passed the decree against which the appeal was preferred; and such Court shall proceed to execute the decree passed in appeal, according to the Rules hereinbefore prescribed for the execution of decrees in suits."

II. The new Section is the same as Section 144 of the British Indian Code. In incorporating that Section, the Notes on Clauses said :—

"This is practically new. The existing Section which to some extent corresponds to the proposed Section is Section 552. It assumes that there is jurisdiction to cause restitution. The proposed Section makes it quite explicit."

III. The Indian Special Committee observed in regard to Section 144 :—"The terms of Section 583 of the Code do not justify the practice founded on it, and the Committee have therefore recast the Section so as to bring it into closer conformity with that practice."

IV. "There is a good deal of difference in the wording of the Section from that of Section 552 in the Code of 1065, which circumstance would require the provisions of the present Code in this behalf to be held to be more comprehensive than those of the old Code. In the first place, the present Section has been relegated to Part X under the miscellaneous provisions in the new Code, while under the old Code, Section 552 found a place in the Chapter relating to appeals from original decrees. Further, in the present Section, the Clause "under a decree passed in appeal" occurring in Section 552 has been deleted, and the expression "where and in so far as the decree is varied or reversed" has been inserted instead. The absence of any reference to the class of Courts which make the variation or reversal, dealt with under the Section, would clearly indicate that the provision is intended to be applicable irrespective of its being a superior Court or the same Court itself, in the course of a proceeding by way of review or restoration on setting aside a decree passed *ex parte*. The effect of the expression "Court of first instance" occurring in the Section cannot militate against the above view. It has to be noticed in this connection that the mode of claiming restitution by means of an application in execution provided for in the old Code has not been adopted in the new Code. As such necessity was felt to prescribe the Court which has to be resorted to for enforcing the right to restitution and with a view to make it comprehensive, and applicable to cases of variation or reversal by the first Court itself, or in appeal, the Legislature laid down that the Courts of first instance should be the Courts where such applications have to be made."—

**43 T. L. R.,** *472*
**(=17 T. L. J.,** *758*).

V. It will be seen from a comparison of Section 108 with Section 552 of the old Code that some change of wording has been made. But this change appears rather to be intended to give effect to the decisions previously passed on the subject. The only substantial change in the law is the express direction in Clause (2) of Section 108 that no suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under the Section.— **18 T. L. J.,** *855*.

### Case Law.

**1.** The power given to Courts under Section 552, C. P. C., to restore to successful appellants what had been taken from them under the decree appealed against, extends to miscellaneous cases also. Though the provisions of Section 552 are not re-enacted in Section 559 [=Or. XLII, r. 2], the power of restitution in miscellaneous cases is inherent in every Court against whose order an appeal is provided by law.

Every subordinate Court whose order is cancelled by the order of the Appellate Court, is bound to give effect to that appellate order, whatever its own view of the case may be.— **10 T. L. R. App.,** *7*.

**2.** The suit was for recovery of mesne profits due between the date of delivery of property under a revised decree and the date of its re-delivery under the High Court decree reversing the original decree,

*Held.*—(1) Where restitution is made under a reversed decree under Section 552, C. P. C., reimbursement of mesne profits appropriated under the reversed decree might be ordered.

(2) In a case like this, although the proper procedure is to apply to the execution Court under Section 288 [new Section 40], that objection is not fatal to the present suit as the institution fee paid for it is more than the fee for an application under Section 238.— **16 T. L. R.,** *41.*

Fol.—17 T. L. R., 32.
Ref.—1 S. D., 86.
2 S. D., 150.
9 T. L. J., 19.

**3.** The first plaintiff, the Karanavan, and 2nd plaintiff his Seshakaran sued to set aside an agreement executed by the 1st plaintiff in favour of the defendant and for delivery of the pr0perties in the hands of the defendants under the agreement, to the 2nd plaintiff. The District Munsiff decreed for 2nd plaintiff, and, during the pendency of the appeal by the defendant, the 2nd plaintiff recovered the property in execution. The Appellate Court modified the Munsiff's decree by allowing 1st plaintiff recovery of the property. The defendant thereupon applied for re-delivery of properties from the 2nd plaintiff under Section 552 C. P. C.

*Held.*—Section 552 C. P. C. is a special provision for a party entitled to any benefit (by way of restitution or otherwise) under a decree passed in appeal. It cannot help any party who is not entitled to any benefit under the appellate decree so as to claim restitution.— **1 S. D.,** *194.*

Ref.—48 T. L. R., 472
(=17 T. L. J., 758).

**4.** When a decree has been reversed or superseded, the remedy may be sought by a new suit for restitution as well as by summary process.

It is difficult to see how an application for restitution is one for execution of the decree. The granting of restitution is not discretionary; and the principle upon which the doctrine rests is that, on reversal or supersession of the decree, the law raises an obligation on the party who received the benefit of the erroneous decree to make restitution to the other party for what he had lost. The principle applies with equal force whether restitution has or has not been directed in the varying or reversing decree; and the Court has an inherent right to order restitution of what has been improperly taken under a wrong order of the Court. An application for restitution not in, or as part of, execution proceedings ought to suffice; and that is the provision now in British India; but that, in the absence of a statutory prohibition, will not render a suit for restitution incompetent.

Where a suit is brought, when an application under Section 233 [new Section 40] C. P. C., should have been presented, the defect may be cured by treating the plaint as an application under that Section.— **9 T. L. J.,** *19.*

Ref.—35 T. L. R., 263
(=9 T. L. J., 430).
38 T. L. R., 274
(=12 T. L. J., 296).
14 T. L. J., 352.
18 T. L. J., 855.

[See Sub-section (2) of this Section.]

**5.** Where, in execution of a decree against the appellant who was jointly and severally liable with others, the appellant deposited the decree amount in Court and objected by a petition to the payment of the deposit to the decree-holders or, in the alternative, for a refund to him of the same on the allegation that the decree, before execution was sought against him, had been satisfied out of Court by the other judgment-debtors and that the decree-holders without certifying satisfaction of the decree under Section 255, C. P. C., [ = Or. XXI, r. 2] fraudulently sought and obtained execution against him; but the alleged satisfaction

was more than sixty days before the present petition, and the lower Court declined to enquire into the same :

*Held* (by the Full Bench, *Sesha Aiyar*, *J.* dissenting) – (1) In view of Section 255, Clause (3) that an uncertified payment shall not be recognised by any Court executing the decree, it was not open to the Court under this Section or Section 238 [new Section 40] to enquire into the plea of adjustment advanced by the appellant after the expiration of 60 days from the date of the adjustment, even though it is alleged that the decree-holders were guilty of fraud in not certifying the adjustment.

(2) The question of restitution did not arise in the case.

*Per Raman Menon, C. J.*—As regards money payable under a decree, payment by itself will not dissolve the obligation, but only payment in one of the modes or forms indicated in Sections 253 and 255 [ = Or. XXI, rr. 1 and 2 ].

If the Court executing the decree is prohibited from recognising a mere payment as a discharge of the decree, the Court will have to grant and proceed with execution, if the decree-holder should apply for it in spite of payment made to him out of Court.

Where a judgment-debtor omits to initiate proceedings to have the payment made by him out of Court duly recorded as certified, the money thus paid to the decree-holder out of Court may be recovered back as a payment made for consideration which has failed, not by raising a plea of fraud in the execution proceedings or by restitution, but in a separate suit.

*Per Palpu Pillai, J.*—If the matter in the applicant's petition could not be enquired into under Section 255, C. P. C., it could not be enquired into under Section 238, as the effect of applying the latter Section would be to render the former nugatory.

To invoke the aid of Section 552, for restitution, it must appear that the decree, in execution of which satisfaction was had, was subsequently set aside or that there was an error committed by the Court and apparent on the face of the record.

*Per Sesea Aiyar, J.*—Section 255 applies only to cases in which the decree is actually pending execution or in which upon reference to the records in Court, it will be seen that the decree has not been satisfied in whole or in part. It will not apply to an instance where, upon the records of the Court, the decree stands satisfied ; and subsequently, no application is made for restitution on the ground that the decree-holder had fraudulently sought and obtained execution by suppressing an adjustment of the decree out of Court.

The question raised in the appellant's petition being one relating to the satisfaction of the decree, the petition may fall within Section 238. Even otherwise, the Court has jurisdiction to entertain and to enquire into the petition.

Where, pursuant to an erroneous order of the Court obtained as the result of fraud practised upon the Court, money had been paid out to a litigant, on an application for restitution, that person can be directed to bring back the money into the Court. The Court has inherent power to direct such restitution.

Section 552 of the C. P. C., is not exhaustive of the cases where, by a summary application, and not by a regular suit, restitution may be sought by a party who, in pursuance of a wrong order of the Court, has had to make payment to a litigant. If a fraud has been committed upon the Court in the application for execution by reason of the false statement made therein by the decree-holder, a Court should not permit a litigant who has obtained a wrong or unjust order, in pursuance of which he has realised money by coercive process, to retain the amount against the party seeking restitution by application to that Court.—

**35 T. L. R.**, *263*
(=**9 T. L. J.**, *430*).

6. Where an *ex parte* decree is set aside and the suit restored to file, the defendant is entitled to claim restitution under Section 108.

Restitution in the Section denotes the restoration to a party of what he had lost under a decree passed against him, which has been varied or reversed on a later date. The Section is not confined to cases where restitution is claimed on the variation or reversal of a decree by a superior Court. Provided the decree is varied or reversed, the Section applies, however the variation or reversal has been effected.

The order of variation or reversal contemplated in the Section need not expressly direct the restitution to entitle the party to claim the same. Such a definite direction is unnecessary, as it is obligatory on the party receiving a benefit under a decree, which has been reversed or varied, to make restitution to the party who has lost thereby. This principle will apply whether restitution has been expressly directed or not. Article 118 of the Civil Court's Guide cannot be interpreted as making such a direction imperative in such cases.—

**43 T. L R.,** *472*
(=**17 T. L. J.,** *758*).

7. One L. executed a hypothecation in favour of plaintiff of the crops, &c., of his estate as security for certain sums to be advanced. By a subsequent document L. mortgaged the same estate to secure the repayment of another amount to be advanced by the plaintiff. In this second document the mortgagor agreed to execute a further mortgage in favour of the plaintiff on the estate for the amount due under the first document. L, having died without carrying out this agreement plaintiff brought a suit against the executors of L., defendants 1 and 2, and a decree *ex parte* was passed on 28-6-1097. On 9-11-1097, the plaintiff applied for execution of a mortgage deed. Notice was issued to defendants to appear on 5-1-1098. The defendants not appearing, the Court on 8-1-1098, passed an order fixing the amount of consideration to be entered in the deed. The deed of mortgage was executed by the Court on 12-1-1098. Thereafter, the plaintiffs exercised their right of foreclosure and declared that they had taken possession of the estate "in their own right."

On the application of the second defendant, the orders of 5-1-1098 and 8-1-1098 were set aside, and the second defendant was allowed to put in his objections to the plaintiff's petition of 9-11-1097. Then the question arose whether the plaintiff was bound to restore the possession which he had obtained as a result of exercising his rights of foreclosure under the deed of mortgage executed by the Court on 12-1-1098 and whether Section 108 applied to such a case.

*Held.*—Section 108 applied to such a case and the plaintiff was bound to restore such possession.

It is true that the suit was not for possession but to enforce the execution of the mortgage. As a result of the orders of the lower Court, which were set aside, it was directed that a mortgage document for a specific amount would be executed by the Court. Such a document was then executed, and the plaintiff relying on that document purported to foreclose the mortgage and take possession in his own right. All these acts flow naturally from the two orders above-mentioned, and could not have taken place but for them. As the parties are entitled to be placed in the position which they would have occupied but for the orders of 5-1-1098 and 8-1-1098, restitution must be ordered of any possession obtained by a natural consequence of those orders. Hence the lower Court must declare cancelled the possession "in his own right" obtained by the plaintiff under the order of the lower Court.

It is the duty of the Court under Section 108 to place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed.

Enforcement of liability of surety.

**109.** Where any person has become liable as surety—

(*a*) for the performance of any decree or any part thereof, or

(*b*) for the restitution of any property taken in execution of a decree, or

(*c*) for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the Court in any suit or in any proceeding consequent thereon,

the decree or order may be executed against him, to the extent to which he has rendered himself personally liable, in the manner herein provided for the execution of decrees, and such person shall, for the purposes of appeal, be deemed a party within the meaning of Section 40:

Provided that such notice as the Court in each case thinks sufficient has been given to the surety.

---

The duty or jurisdiction does not thereby arise under the said Section. It is inherent in the general jurisdiction of the Court rightly and fairly according to the circumstances towards all parties involved.

Where the person entitled to restitution is in possession either actually or through a servant or agent, he can be given restitution of possession where such possession has passed as a consequence of the decree. Where, however, the decree-holder would have been entitled to exclude the appellant from possession, *i. e.*, where the decree is in possession independently of the appellant, no question of re-delivery of possession can arise.

Just as a suit for restitution can be treated as an application for restitution, similarly an application under Section 108 can be converted into a regular suit after levying the necessary Court fees.—

**18 T. L. J.,** *855.*

**8.** See also—

Sec. 2 (2).—**38 T. L. R.,** *274* (=**12 T. L. J.,** *296*).

„ 75.— **14 T. L. J.,** *352.*

Or. XXI, r. 96—

**3 S. D.,** *30.*

---

**Sec. 109** [ = S. 249 = *S. 145* ]

I. **1.** Section 249 of Regulation II of 1065 was as follows :—

"249. *Decree against surety.*—Whenever a person has, before or after the passing of a decree in an original suit or in an appeal, become liable as surety for the performance of the same or of any part thereof, the decree may be executed against him to the extent to which he has rendered himself liable, in the same manner as a decree may be executed against a defendant:

Provided that such notice in writing as the Court in each case thinks sufficient has been given to the surety."

**2.** The Indian Code of 1882, Section 253, did not contain the words "or after" before the words "the passing of a decree" nor the words "or in an appeal" after the words "original suit." The addition of these words were thus explained :—"There is

really no good reason for making a distinction between a surety prior to judgment and one after judgment, in respect of the summary procedure. It is, therefore, proposed to make the Section applicable to all those who become sureties *after the suit*, whether prior or subsequent to the decree. The notice provided for would prevent all dangers of *ex parte* proceedings. It is also proposed to make orders, affecting sureties, *appealable*. With these safeguards, no surety could have any reason to complain of the summary procedure. The creditor, who, on the faith of the surety, suspended the execution of the decree, should not in justice be driven to an expensive and fresh suit to establiish his right against such surety."— *S. O & R, Para 37.*

II. 1. In the Statement of Objects and Reasons on the Indian amending Bill of 1901, it was observed :—"In view of conflicting rulings on the wording of the present Section, it is proposed to make it clear that the summary procedure contemplated by it should apply to suretyships for the performance of any original or appellate decree or for the payment of money under any order of the Court in any suit or proceeding consequent thereto".—

*India Gazette dated 21-12-1901, Pt. V.*

2. The Select Committee on the above mentioned Bill said :—"The provisions relating to the enforcement, by summary process in execution of security given for the performance of a decree or the payment of money should, in our opinion, apply to security given for restitution of property or the fulfilment of conditions."—

*India Gazette dated 21-3-1903, Pt. V.*

III. *Security for the payment of money.* —See Section 47 (4) : Order XXV, Rule 1 : Order XXXVI, Rules 2 and 5 : Order XL, Rule 10.

IV. For Form of Notice to surety of his liability under a decree, see Appendix I, Form No. 13.

### Case Law.

1. An appeal lay against the order of the Zilla Judge refusing to execute a decree against sureties, who (in consideration of the stay of execution of a decree pending the disposal of the appeal preferred against), have made themselves responsible for the amount of the judgment-debt. A surety by his own voluntary act occupies the position of the judgment-debtor. In the same way as orders passed upon questions raised between judgment creditors and debtors are appealable, the orders passed upon points raised between judgment-creditors and sureties are appealable.— **5 T. L. R. App.,** *7.*

2. A surety's liability arises only on the creditor exhausting his remedies against the debtor. Execution against the surety was directed to be suspended until the remedies against the judgment-debtor were exhausted.— **7 T. L. R. App.,** *48.*

Overruled.—**3 S. D.,** *249.*

3. The wording of Travancore C. P. C., Section 249 differs from that of Section 253 of the British Code and refers also to sureties after the passing of a decree and even in appeals.

The surety may be summarily proceeded against in execution in the absence of valid objections.— **K. P.,** *96.*

4. A creditor does not lose his right to proceed against the surety merely because he applied for warrants against the debtor himself. Section 249, C. P. C., gives the same remedy against the surety as against the principal debtor and the creditor has a right to proceed against both.

The surety bond is not a contract entered with the judgment creditor but an undertaking towards the Court creating a statutory right under Section 249 for the enforcement of which it is not necessary to bring a

separate suit. No question of penalty can therefore arise.— **2 S. D.**, *252.*

**5.** A creditor is entitled to proceed against the surety, without exhausting his remedies against the principal debtor. But the execution Court may in its discretion direct that sales of the principal debtor's property should take place before the properties of the surety are proceeded against when the interests of the creditor would not be jeopardised or make any such other order as may be consistent with the equities of the case in order that the surety's interest may also be protected without exposing the creditor to any unreasonable delay or hardship, as eventual indemnity from loss is the *substantial object* of the contract of a surety.

Convenience and expediency point to the desirability of leaving the creditor's right unfettered by any absolute rule to proceed against the principal or the surety at his option. It may be that proceedings against the principal may entail delay for various reasons, whereas steps taken against the surety may result in immediate discharge of the debt. And supposing the surety should become insolvent during the interval in which the creditor is engaged in exhausting all his remedies against the principal debtor, of what avail is the collateral security of the guarantee to him? (F. B).— **3 S. D.**, *249.*

**6.** Plaintiff obtained an *ex parte* decree which was set aside on defendant's executing a surety bond. Suit again was decreed for plaintiff. Surety applied for discharge before the second decree was passed. The Munsiff discharged him. Plaintiff prayed for a review of the above order. The Munsiff cancelled the order after the passing of the second decree.

*Held.*—The Munsiff's order cancelling his first order of discharge was right. The surety's right of appeal relates to all orders against him whether they are made before decree or in execution of decree. The words of Section 557 (15) [new Section 82 and Or. XLII, r. 1] do not confine the right of appeal only to orders for execution of decrees against sureties.— **3 S. D.**, *295.*

**7.** The decree amount deposited by the surety of the judgment-debtor after the latter has been adjudicated an insolvent under the provisions of the Insolvency Regulation, VIII of 1090, cannot be regarded as property or assets of the judgment-debtor so as to disentitle the decree-holder to claim the whole amount in satisfaction of his decree and to compel him to get rateable distribution in company with the other creditors of the judgment-debtor.— **9 T. L. J.**, *8.*

**8.** In a suit for maintenance, the defendant was arrested before judgment and was released on the surety of the special appellant. The primary Court dismissed the suit, but in appeal it was decreed with costs. The defendant died after the date of the appellate decree. In execution of the decree against the surety, he contended that his liability under the bond terminated with the dismissal of the suit by the trial Court, and that the bond was only for the production of the defendant in Court and that any other stipulation contained therein could not be recognised by Court.

*Held.*—The proceedings in the Appellate Court are but continuation of the proceedings of the trial Court. The Court of appeal or revision when it comes to a finding of its own really finds what the trial Court should have found if it was acting correctly and legally.

There is no prohibition in Clause (2) of Section 458 [= Or. XXXVI, r. 2] against the surety's undertaking any liability for the claim in the suit in excess of what is required for the purpose of the provision in the Clause. For enforcing in execution the surety's liability under Section 249, the Court has only to look into the terms of the surety's bond irrespective of the occasion

**110.** Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.

Proceedings by or against representatives.

**111.** In all suits to which any person under disability is a party, any consent or agreement, as to any proceeding shall, if given or made with the express leave of the Court by the next friend or guardian for the suit, have the same force and effect as if such person, were under no disability and had given such consent or made such agreement.

Consent or agreement by persons under disability.

---

for execution of the bond. The appeal was dismissed with costs.— **43 T. L. R.**, *423.*

**9.** The natural construction to be put upon a surety bond will be that the undertaking of a liability has been agreed to, for the amount under the decree howsoever it might be passed. This would include consent decrees also. In the absence of a specification of the nature of the decree contemplated by the parties in the surety bond itself, it would be improper to import into its terms any restrictions as, that the consent decree passed behind the back of a surety has determined the contract of suretyship or that the benefit of the payment of a lesser sum under the compromise decree and the time provided for therein should be extended to a surety.

Further, a surety bond should be deemed to have been executed to the Court creating obligations to the Court and any agreement between the parties resulting in the compromise decree could not affect such obligations to the Court and therefore discharge the liability of the surety to the Court.

Where under a compromise decree no enhanced liability has been created, the surety cannot be said to have in any way been prejudiced by the same.—

**18 T. L. J.**, *1276.*

**10.** See also—

Sec. 82.— **19 T. L. J.**, *621.*

Or. XXXII, r. 6.— **18 T. L. J.**, *655.*

**Sec. 110** [= ,, = *S. 146*]

**Sec. 111** [= ,, = *S. 147* = En. O. 16, r. 21]

I. See Order XXXII, *Infra.*

II. Rule 21 of Order XVI of the Rules of the Supreme Court, 1883, is as follows:—

"21. *Consent by infant or lunatic as to procedure.*—In all causes or matters to which any infant or person of unsound mind, whether so found by inquisition or not, or person under any other disability, is a party, any consent as to the mode of taking evidence or as to any other procedure shall, if given with the consent of the Court or a Judge by the next friend, guardian, committee, or other person acting on behalf of the person under disability, have the same force and effect as if such party were under no disability and had given such consent: provided that no such consent by any committee of a lunatic shall be valid as between him and the lunatic unless

**112.** Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

Enlargement of time.

**113.** Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

Power to make up deficiency of court-fees.

---

given with the sanction of the Lord Chancellor or Lords Justices sitting in Lunacy."

---

**Sec. 112** [= ,, = *S. 148* = En. O. 64, r. 7]

I. "This Section is only expressly enacting what the Courts have adopted as a rule of practice."— *Notes on Clauses.*

II. The Section applies only where time is fixed or granted by the Court for the doing of any act prescribed or allowed by the Code. See Order VI, Rule 18: Order VII, Rule 11: Order VIII, Rule 9: Order XXI, Rule 15: Order XXV, Rule 2: Order XL, Rule 10.

III. Rule 7 of Order LXIV of the Rules of the Supreme Court, 1883, as amended, is as follows:—

"7. *Power to enlarge or abridge time.*— The Court or a Judge shall have power to enlarge or abridge the time appointed by these Rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed. Provided that when the time for delivering any pleading or document or filing any affidavit answer or document, or doing any act is or has been fixed or limited by any of these Rules or by any direction on or under the summons for directions or by any order of the Court or a Judge the costs of any application to extend such time and of any order made thereon shall be borne by the party making such application unless the Court or a Judge shall otherwise order."

### Case Law.

Section 112 is applicable only to proceedings antecedent to the passing of the decree. Therefore, where a time-limit is prescribed under the decree, it is not open to the execution Court to extend the time. The aggrieved party has, if at all, to seek to have the time extended by an application for review under Section 88.

Original decrees should be explicit and not call for references to any other documents—Rule 111 of the Civil Courts Guide.— **17 T. L. J., *441*.**

---

**Sec. 113** [= — = *S. 149*]

114. Save as otherwise provided, where the business of any Court is transferred to any other Court, the Court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred.

Transfer of business.

115. Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

Saving of inherent powers of Court.

---

**Sec. 114** [ = „ = *S. 150* ]

See Order IX, Rule 13, which provides that where an *ex parte* decree is passed against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside.

**Case Law.**

See Sec. 15.—**32 T. L. R.**, *168* (=**6 T. L. J.**, *378*).

**Sec. 115** [ = „ = *S. 151* ]

I. "This is an express enactment and recognition of the inherent powers of Courts to do all that may be necessary to achieve the object for which they exist."—*Notes on Clauses.*

II. "Criminal Courts no less than Civil Courts exist for the administration of justice and Courts of both description have inherent power to mould the procedure, subject to the statutory provisions applicable to the matter in hand, to enable them to discharge their functions as Courts of justice" (15 Cal. L. J., 517). "Section 151 does not lay down any now principle ; it merely embodies a legislative recognition of the inherent power of the Court to make such orders as may be necessary for the ends of justice. This inherent power is in no sense restricted in application to civil cases; it is equally applicable to criminal matters. This power is not capriciously or arbitrarily exercised, it is exercised *ex debito justitia* to do that real and substantial justice for the administration of which alone Courts exist ; but the Court in the exercise of such inherent power, must be careful to see that its decision is based on sound general principles and is not in conflict with them or with the intention of the Legislature as indicated in statutory provisions" (44 Cal., 816). "One of the first and highest duties of all Courts is to take care that this act of the Court does no injury to any of the suitors and when the expression 'the act of the Court' is used, it does not mean merely the act of the primary Court or of any intermediate Court of appeal but the act of the Court as a whole, from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case. It is the duty of the aggregate of those Tribunals, if I may use the expression, to take care that no act of the Court in the course of the whole of the Proceedings does an injury to the suitors in the Court" (L. R. 3 P. C., 465).—**40 T. L. R.**, *303* ( = **15 T. L. J.**, *85*).

**Case Law.**

1. The High Court being a superior Court of record possesses inherent power to punish summarily for contempt of Court and such power is essential to the due administration of justice.

The provisions of the Code of Criminial Procedure on the point are not exhaustive.

The jurisdiction of the High Court to punish for contempt of Courts may be exercised by that Court to protect inferior Courts.

The reason of the rule is that the High Court exercises a vigilant watch over the proceedings of the inferior Courts and successfully prevents them from usurping powers or otherwise acting contrary to law, so that it should possess correlative powers of guarding them against unlawful attacks and interferences with their independence on the part of others (F. B.).— **37 T. L. R.,** *106.*

Ref. – 13 T. L. J., 309.

**2.** On an appeal from the order refusing to vacate an *ex parte* decree, the High Court has inherent jurisdiction to stay execution of the decree and that jurisdiction is not ousted by the provisions in the Code dealing with the subject of stay of execution.— **16 T. L. J.,** *24.*

**3.** The revision petition was by a witness in a Sessions case praying for the expunction of the remarks made against him by the Sessions Judge in his judgment.

*Held.*—The High Court has inherent powers in criminal cases to make any order that is necessary to secure the ends of justice even when the effective orders of the Courts below are not before it either on appeal or in revision. It follows that the High Court has power to entertain the application and to order the expunction of the remarks made by the Sessions Judge.— **43 T. L. R.,** *263* (= **16 T. L. J.,** *624*).

**4.** No provision is made in the Code of Civil Procedure for appeals against orders passed in the exercise of the inherent powers of the Court. No appeal lies against such orders.

In the case, where the primary Court gave a decree for redemption, the lower Appellate Court reversed the decree and remanded the case. It was contended that no appeal lay against the order of remand. The remand, it was contended, could not be treated as one falling under Order XL, Rule 22, as that Rule referred only to a case where the original Court had disposed of the suit upon a preliminary point and the decree was reversed in appeal. But the original Court did not dispose of the case on a preliminary point. But apart from that Rule, the Court could, in the exercise of its inherent power under Section 115 remand a case for retrial.—**18 T. L. J.,** *968.*

**5.** There is no reason why, under Section 115, an inherent power to remand should not exist, as the exercise of it may be frequently called for, owing to contentions not provided for by Order XL, Rule 22, such as where the defendants' evidence has been entirely shut out owing to a mistaken refusal by the lower Court to give an opportunity for adducing it.

Where the order of remand is not passed under Order XL, Rule 22, but under Section 115, no appeal lies; but the High Court will interfere in cases where injury has been caused which cannot be compensated for by the ultimate success.

The practice of the High Court in the matter of revision has been more liberal than in British India. The rule that the High Court will not interfere in revision when an adequate remedy exists otherwise is not an absolute rule of law, but is a wise rule of practice by which the High Court limits interference to those cases where it is absolutely necessary.

An Appellate Court which remands a suit for defect or error in the issues should point out how they are defective or erroneous and specify the issues which are deemed necessary. A general observation that the issues are defective is no proper reason for remand nor is it helpful to the trial Court. Where an order appears on the face

of it to have been given by the subordinate Court in abuse of its inherent powers, the High Court will interfere in revision and correct such error.—**44 T. L. R.**, *148* ( = **18 T. L. J.**, *1007*).

**6.** The revision petition was against an order restoring an appeal dismissed for default. When the appeal came on for hearing, neither the appellant's Vakil nor the Vakil to whom a memo had been given appeared, and hence the dismissal. The Court had closed before a restoration petition signed by the appellant's Vakil could be filed on the very day. There was a delay of 23 days in making a fresh application, due to the fact that the petitioner was a resident of Singapore, and also to delays in postal service caused by floods at land and storms at sea. The lower Court excused the delay, under the circumstances.

*Held.*—The period of limitation under Article 140 of the Limitation Regulation (old) having expired, there were no exceptional circumstances to have the delay excused under Section 5 of the same Regulation.

The exceptional circumstances which would justify the exercise of the inherent powers of the Court under Section 115 of the Civil Procedure Code, must be something more than mere difficulty or inconvenience, and not merely a desire to evade the effects of the statutory provision.— **19 T. L. J.**, *236*.

**7.** In the nature of the wording of Section 115, the existence of any other remedy in the matter under the Code should not be taken to preclude the Court from passing appropriate orders where in its opinion the same is considered necessary in the interests of justice or for preventing the abuse of the process of the Court. The question whether this power should be exercised or not will have to be decided on the merits of each case. In deciding it, the Court is at liberty to take into consideration the conduct of the parties, the non-existence of the remedies open to them, and such other matters akin thereto, but if the Court thinks that, in spite of these considerations the error committed is of so gross a character that a rectification thereof is necessary in the interests of justice or that a hearing of the original order undisturbed would result in a palpable abuse of the process of the Court, the inherent power of the Court could be invoked and the rectification of the error could with propriety be made.

The award in excess of the plaint should be viewed as a slip or omission which the Court has a right to rectify *suo moto* without reference to lapse of time under Section 116.— **19 T. L. J.**, *691*.

**8.** See also—

Sec. 9.—**19 T. L. J.**, *632*.
Pt. II, Execution
(General).—**19 T. L. J.**, *752*.
„ 40.— **6 T. L. J.**, *22*
**14 T. L. J.**, *218*.
„ 72.—**1 S. D.**, *44*.
„ 85.—**35 T. L. R.**, *155*.
**13 T. L. J.**, *407*.
**42 T. L. R.**, *128*
( =**15 T. L. J.**, *326*).
„ 89.—**14 T. L. J.**, *183*.
„ 101.—**24 T. L. R.**, *191*.
„ 108.—**10 T. L. R. App.**, *7*.
„ 116.—**27 T. L. R.**, *61*
( =**2 T. L. J.**, *270*).
**10 T. L. J.**, *172*.
Or. I, r. 10.—**11 T. L. J.**, *278*.
„ VI.— **2 T. L. J.**, *332*.
„ VI, r. 17.—**43 T. L. R.**, *344*
(=**17 T. L. J.**, *161*).
„ IX, r. 9.—**16 T. L. J.**, *71*.
„ XVII, r. 3.—**23 T. L. R.**, *232*.
„ XXI, r. 91.—**12 T. L. J.**, *283*.
„ XXII, r. 4.—**15 T. L. J.**, *371*.
„ XXXVII, r. 1.—**3 S. D.**, *290*.
**18 T. L. J.**, *816*.
**18 T. L. J.**, *966*.
„ „ r. 2.—**26 T. L. R.**, *163*.
„ XL, r. 22.—**32 T. L. R.**, *80*.
**38 T. L. R.**, *217*
( =**12 T. L. J.**, *160*).
**18 T. L. J.**, *175*.

Amendment of judgments, decrees or orders.

116. Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

---

Sec. 116 [Cf. S. 201, last Para = *S. 152* = En. Or. 28, r. 11]

I. 1. The last para of Section 201 of the old Regulation was as follows :—

"*Power to amend decree.*—If the decree is found to be at variance with the judgment, or if any clerical or arithmetical error be found in the decree, the Court shall, of its own motion or on that of any of the parties, amend the decree so as to bring it into conformity with the judgment or to correct such error : Provided that reasonable notice has been given to the parties or their pleaders of the proposed amendment."

2. For the first two Paragraphs of Section 201, see under Or. XX, r. 6.

II. Rule 11 of Order XXVIII of the Rules of the Supreme Court, 1883, is as follows:—

"11. *Slip Rule.*—Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court or a Judge on motion or summons without an appeal."

**Case Law.**

1. The omission by oversight to enter the defendant's Vakil's fees should be corrected.— **24 T. L. R.**, *228*.

2. The appeal by the first defendant in the case was necessitated by a clerical error in the decretal portion of the lower Appellate Court's judgment.

*Held.*—The appeal was allowed. As the appeal might have been avoided by the first defendant moving the District Court to correct the clerical mistake, instead of going to the High Court to have it done, no order was made as to costs in the High Court.— **4 S. D.**, *72*.

3. The final decree in a case being that of the Appellate Court, the only Court which has jurisdiction to amend that decree is the Appellate Court.

It is the duty of the Court to amend its own decree under Section 201, whenever it is found to be not in conformity with the judgment.

A Court can amend its decree at any time either upon or without any application of any party to the decree and irrespective of the fact that the application for amendment made by the party is out of time.

No appeal lies against an order under Section 201, C. P. C. An order under Section 201 is not a decree, nor is it made appealable under Section 557, C. P. C. [Section 82 and Order XLII, r. 1].— **1 T. L. J.**, *90*.

Appl.—28 T. L. R., 168.

4. In a redemption suit, the High Court gave a decree for plaintiff. The decretal portion of the judgment ran as follows:—"Plaintiff may recover the plaint properties on payment to the first defendant of the mortgage amount mentioned in Exhibit III." The mortgage amount which the plaintiff was directed to pay was admittedly Fanams 2,000; but it was erroneously stated in the judgment as "the amount mentioned in Exhibit III", which was only Fanams 165. The petitioner (mortgagee-defendant) moved the Court for correcting the mistake, and it was contended on behalf of the counter-petitioner, plaintiff, that the Court had no power to correct it.

*Held.*—The Court had the power to correct the mistake.

Section 201, C. P. C., read with Sections 551 and 556 [new Sections 85 (2) and 86]

had no application; for there was no variance between the decree and the judgment. Nor had Section 509 [new Section 88] any application, because this was not a petition for review. But apart from the provisions contained in these Sections, the Court has inherent power to make such orders as may be necessary for the ends of justice.

Where the Legislature has provided no procedure to be followed in cases which must and do arise, an inherent power exists in Courts for doing what is necessary (15 All., 95). The Court has inherent jurisdiction to amend the plaint and decree (16 Mad, 427). "There is no such magic in passing and entering an order as to deprive the Court of jurisdiction to make its own records true and if an order as passed and entered does not express the real order of the Court, it would be shocking to say that the party aggrieved cannot come here to have the record set right. It appears to me, therefore, that if it is once made out that the order whether passed and entered or not, does not express the order actually made, the Court has ample jurisdiction to set that right whether it arises from a clerical slip or not" (L. R. 30 Ch. D., 239). "Every Court has inherent power over its own records so long as those records are within its own power, and it can set right any mistake in them." Where no specific law exists in any particular case, Courts shall act according to justice, equity and good conscience. In the absence of a statutory provision, the same rule applies to adjective law also.

This order based upon the inherent power of the Court is not inconsistent with the order rejecting as time-barred a review petition put in by the petitioner for a review of the judgment.— **27 T. L. R.,** ***61***
**(= 2 T. L. J.,** ***270*****).**

Ref.—38 T. L. R., 17
(=12 T. L. J., 278).
19 T. L. J., 691.
Dist.—6 T. L. J., 22.

**5.** Where there has been an appeal against the decree of the District Munsiff and a decree has been passed thereon, the District Munsiff has no longer any power to amend his decree and the only Court that has jurisdiction in the matter is the Appellate Court. The fact that only a portion of the decree passed by the Munsiff was appealed against to the District Court and the amendment of the decree sought for related only to the unappealed portion, does not affect the rule of law above laid down.

The point involved was one of jurisdiction and if the Munsiff had in passing the order sought to be revised exercised a jurisdiction not vested in him, such order could not be allowed to stand, though the District Court having jurisdiction may pass the order.— **28 T. L. R.,** ***168*****.**

Ref.—30 T. L. R., 239
(=4 T. L. J., 231).

**6.** In O. S. 21 of 1078, plaintiff obtained a decree for money against defendant, and proceeded to execute it. Meantime, in O. S. 106 of 1076 a suit for settlement of partnership accounts, wherein plaintiff and defendant were co-defendants, the decree of the District Court directed plaintiff to pay a certain amount to defendant in settlement of mutual claims. Against this decree, two appeals were preferred to the High Court, one by the plaintiff in the latter case (A. S. 349), and the other by the defendants in that case (including the present plaintiff) (A. S. 375), and the High Court, by its preliminary judgment, changed the respective shares of the partners in the business. Pending the final decree fixing the exact amounts due from each to the other, appellant in A. S. 349, who was also a respondent in A. S. 375, died, and his heirs were not impleaded in time, and therefore the appeals abated and were dismissed. The defendant, judgment-debtor in O. S. 21 of 1078, claimed to set off against the debt due by him the amount declared by the decree of the District Court in O. S. 106 of 1076 to be due to

him from the plaintiff. The plaintiff contended this could not be done on the ground that the preliminary decree of the High Court had superseded the decree of the Court of first instance. Defendant replied by saying that the abatement and dismissal of the appeals before the High Court nullified the effect of the preliminary decree.

*Held* [*Per Ramachandra Row and Muttunayagom Pillai, JJ.* (Krishnan Nair, C. J., dissenting) ].—

The findings in a preliminary judgment in a partnership suit were declaratory orders made in the first instance with the object of forming a basis for further and final proceedings, and that accordingly they were of no avail by themselves as a final adjudication of any of the points in dispute between the parties, unless they were incorporated in the final decree.

The effect of the final dismissal of an appeal was to leave undisturbed the decree of the Court of first instance, which thereby became final in spite of any preliminary judgment that may have been passed in appeal.

The defendant, judgment-debtor in O. S. 21 of 1078, was, therefore, entitled to set off the amount adjudged to him by the decree of the District Court in O. S. 106 of 1076, and the plaintiff was not entitled to rely upon the findings contained in the preliminary judgment of the High Court, which became of no effect after the final dismissal of the appeals by that Court.

*Per Krishnan Nair, C. J.*—The preliminary order of the High Court in A. S. Nos. 349 and 375 is a final decision on the points in issue between the parties so as to amount to a decree in a suit, and such a decree is final so far as the Court passing it is concerned, and could not be altered, except on review.

The dismissal of the appeals Nos. 349 and 375 *in toto* was invalid and inoperative, and must be regarded as non-existing in the eye of the law, so far as the matters finally determined in the preliminary judgment are concerned, as after passing the preliminary judgment the Court became *functus officio* in so far as the matters contained therein were concerned.

The preliminary judgment passed in appeal by the High Court, altering the shares as determined by the District Court, continued to be alive and binding on the parties, and had not been extinguished by the final judgment dismissing the appeals.—

**2 T. L. J.**, *163*.

7. Against a partnership decree, two of the partners (plaintiff and first defendant) appealed to the High Court. The High Court passed a preliminary order directing the drawing up of a final decree on certain terms; but before the directions could be carried out, the plaintiff who was appellant in one appeal (and respondent in the other) died, and his legal representative not coming in within time, the appeal was dismissed as having abated and the appeal of the other partner was also dismissed as having abated for the reason that the legal representative of the respondent was not impleaded in time. Fourth defendant, one of the other partners, applying to the District Court for execution of the decree, the legal representative of the first defendant objected that the shares were wrongly mentioned, and applied for correction of the decree. The District Judge dismissed the application on the ground that he had no jurisdiction to correct the decree as the case had been decided on appeal by the High Court. It was contended in appeal before the High Court that, as the appeals were disposed of on the ground that they had abated, there was no adjudication on the merits, and, therefore, the lower Court's decree was left untouched, and that practically the same legal consequences should follow, as if the original decree had not been appealed against.

*Held.*—The Court below was right in holding that it had no jurisdiction to correct the decree, as the final decree in the case was that of the High Court and the High Court alone had the power to correct that decree.

When the appeals were entertained in the High Court against the original decree, the High Court became seized of the whole case and it is the order or decree of the Appellate Court finally disposing of the appeals that has to be treated as the decree in the case. "When an appeal is preferred from a decree of a Court of first instance the suit is continued in the Court of appeal either in whole or in part according as the whole suit is litigated again in the Court of appeal or only a part of it. The final decree in the appeal will thus be the final decree in the suit whether that be one confirming, varying or reserving the decree of the Court of first instance. The mere fact that a matter is litigated both in the Court of first instance and again though only in part in the Court of appeal cannot convert or split the suit into two, and there can be only one final decree in that suit, namely, the decree of the Court of appeal. If the appeal is against a portion of the decree only and the appeal is dismissed, the decree will be one confirming as a whole the decree appealed against, and the confirmation is not limited to the portion appealed against. If such appeal be allowed the decree appealed against will not be reversed by the appellate decree, but only varied or modified, and confirmed as to the rest, that is, the portion not appealed against." The circumstance that the final disposal of the appeal by the Appellate Court did not result in a decree on the merits does not affect the principle discussed. In cases where appeals preferred against original decrees have been dismissed for default, it is the Appellate Court, and not the original Court, that has the power to amend the decree in the case.

"An appeal need not necessarily end in a decree upon the merits, but may be finally disposed of by orders, and these orders are not the less final than decrees simply because they are liable to be set aside by subsequent proceedings. Until so set aside they are like decrees, which are also equally liable to be set aside by review or other subsequent proceedings, final." (F. B.).—

**30 T. L. R.**, *239*

(= **4 T. L. J.**, *221*).

8. Section 201 of the Civil Procedure Code provides for rectification of decree on the ground of accidental error: and though perhaps, from the language of the Section, it may be contended that, to bring a case under that Section, the error must be clerical or arithmetical only, it is well established, that errors arising in decrees or orders from any accidental slip or omission may also be sought to be corrected by a similar process. Indeed, the Courts have held that, in the exercise of its inherent power, a Court can, as a part of its machinery for the administration of justice, rectify its decrees and orders, not only when they are vitiated by any accidental slip or omission, but even when they do not represent what the Court really intended to pronounce.—

**10 T. L. J.**, *172*.

Ref.—19 T. L. R., 691.

9. An application for correcting the decree so as to bring it into conformity with the judgment is not subject to any rule of limitation. Section 116 has only given statutory recognition to this principle by expressly declaring that the amendment could be made at any time.—

**17 T. L. J.**, *679*.

10. See also—

Sec. 115.—**19 T. L. J.**, *691*.

117. The Court may, at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

General power to amend.

118. Nothing in this Code shall affect any present right of appeal which shall have accrued to any party at its commencement.

Saving of present right of appeal.

119. The enactments mentioned in the Second Schedule are hereby repealed to the extent specified in the fourth column thereof.

Repeals.

120. Notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed, forms framed, appointments made and powers conferred under the Code of Civil Procedure or any Regulation amending the same or under any other enactment hereby repealed shall, so far as they are consistent with this Code, have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under this Code and by the authority empowered thereby in such behalf.

Continuance of orders under repealed enactments.

---

**Sec. 117** [Cf. S. 49 (c) = *S. 153* = En. Or. 28, r. 12]

I. **1.** "This Section confers wide powers of amendment."— *Notes on Clauses.*

See also Notes under Order VI, Rule 17.

**2.** For Section 49 (c) of Regulation II of 1065, see Order VI, Rule 17.

II. **1.** For amendments of "pleadings," see Order VI, Rule 17.

**2.** For correcting errors in "judgments, decrees or orders," see Section 116.

III. Rule 12 of Order XXVIII of the Rules of the Supreme Court, 1883, is as follows :—

"12. *General power of amendment.*—The Court or a Judge may, at any time, and on such terms as to costs or otherwise as the Court or Judge may think just, amend any defect or error in any proceedings, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings."

**Case Law.**

See under Order VI, r. 17.

---

**Sec. 118** [Cf. S. 3, Para 3 = *S. 154*]

The corresponding Section 3, Para. 3, of the old Regulation was as follows :—

"3. *Saving of procedure in suits instituted before 1st of Chingom 1066.*—Save as

Reference to Code of Civil Procedure and other repealed enactments.

**121.** In every enactment or notification passed or issued before the commencement of this Code in which reference is made to or to any Chapter or Section of the Code of Civil Procedure or any Regulation amending the same or any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding Part, Order, Section or rule.

Procedure in suits and appeals to which Edappally Chief is a party.

**122.** In all suits and appeals to which the Edappally Chief is a party, he shall be exempt from personal appearance in Court, and shall be competent to grant a general power-of-attorney; and any person holding such power and declared as such by Notification in Our Government Gazette shall be deemed a recognized agent under this Code and shall have the power to verify plaints and written statements on behalf of the said Chief according to the provisions contained in this Code.

---

provided by Section 94, nothing herein contained shall affect any proceedings prior to decree in any suit instituted or appeal presented before the first day of Chingom 1066, or any proceedings after decree that may have been commenced and were still pending at that date."

Sec. 119 [Cf. S. 3, Para 1 = *S. 156*]

Sec. 120 [Cf. S. 3, Para 1 = *S. 157*]

The corresponding Section 3, Para 1, of the old Regulation was as follows :—

"3. *Enactments repealed.*—The enactments specified in the First Schedule hereto annexed are hereby repealed to the extent mentioned in the third column thereof. But all Notifications published, declarations and Rules made, places appointed, agreements filed, scales prescribed and Forms framed, under any such repealed enactment, shall, so far as they are consistent with this Regulation, be deemed to be respectively published, made, appointed, filed, prescribed and framed hereunder."

Sec. 121 [Cf. S. 3, Para 2 = *S. 158*]

I. This Section reproduces Section 158 of the British Indian Code.

II. The corresponding Section 3, Para 2, of the old Regulation was as follows :—

"3. *Reference in previous Regulations.*—When, in any Regulation or Notification passed or issued prior to the day on which this Code comes into force, reference is made to the 'Code of Civil Procedure', or to any other Regulation hereby repealed, such reference shall, so far as may be practicable, be read as applying to this Code or the corresponding part thereof."

Sec. 122 [ = S. 579 = ,, ]

A junior member of the Edappally *alias* Elangallor Swaroopam sued the defendant, the Senior Rajah for a declaration of his

123. Officers and servants attached to Our Palace or to the Pagoda of Sri Padmanabhaswami at Trivandrum (whether they be on duty or on leave) shall not, without Our previous sanction, be arrested in execution of any civil process issued either before or after the decree or in any proceeding under this Code. Such sanction shall be obtained through the Sarvadhikariakar of Our Palace.

Arrest of Palace officers and servants.

Our Sarvadhikariakar shall from time to time furnish the High Court with a list of the names of the officers and servants attached to Our Palace and to the Pagoda of Sri Padmanabhaswami at Trivandrum.

---

right for an increased rate of allowance. The latter contended, *inter alia*, that the ordinary Civil Courts of this State were precluded from adjudicating on the private rights and claims of the junior members of his family against the senior Chief.

*Held.*—The Edappally Chief is not entitled to any exemption from the jurisdiction of the ordinary Civil Courts of this State. The position of the Chief, whatever it may have been in olden days, does not, now that he has ceased for a long time to exercise the rights of sovereignty, differ materially from that of a Zamindar on the East Coast. Suits by and against the Edappally Chief have not been infrequent. The Legislature of the State has, in consideration of the rank and position of the Edappally Chief, exempted him from personal appearance in Courts and conceded to him the privilege of making appearances in Courts through a recognised agent (Section 579), and this fact of itself is sufficient proof of the vesting of jurisdiction over the Edappally Chief in the ordinary Courts. The Chiefs of Edappally have, without interruption, been under the protection of the Sovereigns of Travancore for a very long time, and this protection has been afforded through executive and judicial officers of the State (F. B.).—

**14 T. L. R.,** *73.*

**Sec. 123** [ = S. 590 = „ ]

# THE FIRST SCHEDULE.

## ORDER I.

### Parties to Suits.

RULES.

1. Who may be joined as plaintiffs.
2. Power of Court to order separate trials.
3. Who may be joined as defendants.
4. Court may give judgment for or against one or more of joint parties.
5. Defendant need not be interested in all the relief claimed.
6. Joinder of parties liable on same contract.
7. When plaintiff in doubt from whom redress is to be sought.
8. One person may sue or defend on behalf of all in same interest.
9. Mis-joinder and non-joinder.
10. Suit in name of wrong plaintiff.
    Court may strike out or add parties.
    Where defendant added, plaint to be amended.
11. Conduct of suit.
12. Appearance of one of several plaintiffs or defendants for others.
13. Objections as to non-joinder or mis-joinder.

## ORDER II.

### Frame of Suit.

1. Frame of suit.
2. Suit to include the whole claim.
   Relinquishment of part of claim.
   Omission to sue for one of several reliefs.
3. Joinder of causes of action.
4. Only certain claims to be joined for recovery of immovable property.
5. Claims by or against executor, administrator or heir.
6. Power of Court to order separate trials.
7. Objections as to mis-joinder.

## ORDER III.

### Recognised Agents and Pleaders.

RULES.

1. Appearances, etc., may be in person, by recognized agent or by pleader.
2. Recognized agents.
3. Service of process on recognized agent.
4. Appointment of pleader.
5. Service of process on pleader.
6. Agent to accept service.
   Appointment to be in writing and to be filed in Court.

---

## ORDER IV.

### Institution of Suits.

1. Suit to be commenced by plaint.
2. Register of suits.

---

## ORDER V.

### Issue and Service of Summons.

*Issue of Summons.*

1. Summons.
2. Copy or statement annexed to summons.
3. Court may order defendant or plaintiff to appear in person.
4. No party to be ordered to appear in person unless resident within certain limits.
5. Summons to be either to settle issues or for final disposal.
6. Fixing day for appearance of defendant.
7. Summons to order defendant to produce documents relied on by him.
8. On issue of summons for final disposal, defendant to be directed to produce his witnesses.

*Service of Summons.*

9. Delivery or transmission of summons for service.
10. Mode of service.
11. Service on several defendants.

RULES.

*Service of Summons.*—(Concld.)

12. Service to be on defendant in person when practicable, or on his agent.
13. Service on agent by whom defendant carries on business.
14. Service on agent in charge in suits for immovable property.
15. Where service may be on male member of defendant's family.
16. Person served to sign acknowledgment.
17. Procedure when defendant refuses to accept service, or cannot be found.
18. Endorsement of time and manner of service.
19. Examination of serving officer.
20. Substituted service.
    Effect of substituted service.
    Where service substituted, time for appearance to be fixed.
21. Service of summons where defendant resides within jurisdiction of another Court.
22. Duty of Court to which summons is sent.
23. Service on defendant in prison.
24. Service where defendant resides out of Travancore and has no agent.
25. Service on civil public officer or on servant of local authority.
26. Service on soldiers.
27. Duty of person to whom summons is delivered or sent for service.
28. Substitution of letter for summons.

---

## ORDER VI.

## Pleadings generally.

1. Pleading.
2. Pleading to state material facts and not evidence.
3. Forms of Pleading.
4. Particulars to be given where necessary.
5. Further and better statement, or particulars.
6. Condition precedent.
7. Departure.
8. Denial of contract.
9. Effect of document to be stated.
10. Malice, knowledge, etc.
11. Notice.

RULES.

*Pleadings generally.*—(Concld.)

12. Implied contract, or relation.
13. Presumptions of law.
14. Pleading to be signed.
15. Verification of pleadings.
16. Striking out pleadings.
17. Amendment of pleadings.
18. Failure to amend after order.

---

ORDER VII.

**Plaint.**

1. Particulars to be contained in plaint.
2. In money suits.
3. Where the subject-matter of the suit is immovable property.
4. When plaintiff sues as representative.
5. Defendant's interest and liability to be shown.
6. Grounds of exemption from limitation law.
7. Relief to be specifically stated.
8. Relief founded on separate grounds.
9. Procedure on admitting plaint.
   Concise statements.
10. Return of plaint.
    Procedure on returning plaint.
11. Rejection of plaint.
12. Procedure on rejecting plaint.
13. Where rejection of plaint does not preclude presentation of fresh plaint.

*Documents relied on in plaint.*

14. Production of document on which plaintiff sues.
    List of other documents.
15. Statement in case of documents not in his possession or power.
16. Suits on lost negotiable instruments.
17. Production of shop-book.
    Original entry to be marked and returned.
18. Inadmissibility of document not produced when plaint filed.

---

## ORDER VIII.

### Written Statement and Set-off.

RULES.

1. Written statement.
2. New facts must be specifically pleaded.
3. Denial to be specific.
4. Evasive denial.
5. Specific denial.
6. Particulars of set-off to be given in written statement.
   Effect of set-off.
7. Defence or set-off founded on separate grounds.
8. New ground of defence.
9. Subsequent pleadings.
10. Procedure when party fails to present written statement called for by Court.

---

## ORDER IX.

### Appearance of Parties and Consequence of Non-appearance.

1. Parties to appear on day fixed in summons for defendant to appear and answer.
2. Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs.
3. Where neither party appears, suit to be dismissed.
4. Plaintiff may bring fresh suit or Court may restore suit to file.
5. Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons.
6. Procedure when only plaintiff appears.
   When summons duly served.
   When summons not duly served.
   When summons served, but not in due time.
7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.
8. Procedure where defendant only appears.
9. Decree against plaintiff by default bars fresh suit.
10. Procedure in case of non-attendance of one or more of several plaintiffs.

RULES.

*Appearance of Parties and Consequence of Non-appearance.*—(Concld.)

11. Procedure in case of non-attendance of one or more of several defendants.

12 Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

*Setting aside Decrees ex parte.*

13. Setting aside decree *ex parte* against defendant.

14. No decree to be set aside without notice to opposite party.

ORDER X.

**Examination of Parties by the Court.**

1. Ascertainment whether allegations in pleadings are admitted or denied.

2. Oral examination of party, or companion of party.

3. Substance of examination to be written.

4. Consequence of refusal or inability of pleader to answer.

ORDER XI.

**Discovery and Inspection.**

1. Discovery by interrogatories.

2. Particular interrogatories to be submitted.

3. Costs of interrogatories.

4. Form of interrogatories.

5. Corporations.

6. Objections to interrogatories by answer.

7. Setting aside and striking out interrogatories.

8. Affidavit in answer, filing.

9. Form of affidavit in answer.

10. No exception to be taken.

11. Order to answer or answer further.

12. Application for discovery of documents.

13. Affidavit of documents.

14 Production of documents.

15. Inspection of documents referred to in pleading or affidavits.

16. Notice to produce.

RULES.

*Discovery and Inspection.*—(Concld.)

17. Time for inspection when notice given
18. Order for inspection.
19. Verified copies.
20. Premature discovery.
21. Non-compliance with order for discovery.
22. Using answers to interrogatories at trial.
23. Order to apply to minors.

---

ORDER XII.

**Admissions.**

1. Notice of admission of case.
2 Notice to admit documents.
3. Form of notice.
4. Notice to admit facts.
5. Form of admissions.
6. Judgment on admissions.
7. Affidavit of signature.
8. Notice to produce documents.
9. Costs.

---

ORDER XIII.

**Production, Impounding and Return of Documents.**

1. Documentary evidence to be produced at first hearing.
2. Effect of non-production of documents.
3. Rejection of irrelevant or inadmissible documents.
4. Endorsements on documents admitted in evidence.
5. Endorsements on copies of admitted entries in books, accounts and records.
6. Endorsements on documents rejected as inadmissible in evidence.
7. Recording of admitted and return of rejected documents.
8. Court may order any document to be impounded.
9. Return of admitted documents.
10. Court may send for papers from its own records or from other Courts.
11. Provisions as to documents applied to material objects.

---

## ORDER XIV.

### Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon.

RULES.

1. Framing of issues.
2. Issues of law and of fact.
3. Materials from which issues may be framed.
4. Court may examine witnesses or documents before framing issues.
5. Power to amend, and strike out, issues.
6. Questions of fact or law may by agreement be stated in form of issues.
7. Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

---

## ORDER XV.

### Disposal of the Suit at the first hearing.

1. Parties not at issue.
2. One of several defendants not at issue.
3. Parties at issue.
4. Failure to produce evidence.

---

## ORDER XVI.

### Summoning and Attendance of Witnesses.

1. Summons to attend to give evidence or produce documents.
2. Expenses of witness to be paid into Court on applying for summons.

   Experts.

   Scale of expenses.
3. Tender of expenses to witness.
4. Procedure where insufficient sum paid in.

   Expenses of witnesses datained more than one day.
5. Time, place and purpose of attendance to be specified in summons.
6. Summons to produce document.
7. Power to require persons present in Court to give evidence or produce document.
8. Summons how served.

RULES.

*Summoning and Attendance of Witnesses.*—(Concld.)

**9.** Time for serving summons.

**10.** Procedure where witness fails to comply with summons.

**11.** If witness appears, attachment may be withdrawn.

**12.** Procedure if witness fails to appear.

**13.** Mode of attachment.

**14.** Court may of its own accord summon as witnesses strangers to suit.

**15.** Duty of persons summoned to give evidence or produce document.

**16.** When they may depart.

**17.** Application of Rules 10 to 13.

**18.** Procedure where witness apprehended cannot give evidence or produce document.

**19.** No witness to be ordered to attend in person unless resident within certain limits.

**20.** Consequence of refusal of party to give evidence when called on by Court.

**21.** Rules as to witnesses to apply to parties summoned.

---

## ORDER XVII.

## Adjournments.

**1.** Court may grant time and adjourn hearing.
Costs of adjournment

**2.** Procedure if parties fail to appear on day fixed.

**3.** Court may proceed notwithstanding either party fails to produce evidence, etc.

---

## ORDER XVIII.

## Hearing of the Suit and Examination of Witnesses.

**1.** Right to begin.

**2.** Statement and production of evidence.

**3.** Evidence where several issues.

**4.** Witnesses to be examined in open Court.

**5.** How evidence shall be taken in appealable cases.

**6.** When deposition to be interpreted.

**7.** Memorandum when evidence not taken down by Judge.

RULES.

*Hearing of the Suit and Examination of Witnesses.*—(Concld.)

8. When evidence may be taken in English.
9. Any particular question and answer may be taken down.
10. Questions objected to and allowed by Court.
11. Remarks on demeanour of witnesses.
12. Memorandum of evidence in unappealable cases.
13. Judge unable to make such memorandum to record reasons of his inability.
14. Power to deal with evidence taken before another Judge.
15. Power to examine witness immediately.
16. Court may recall and examine witness.
17. Power of Court to inspect.

---

## ORDER XIX.

### Affidavits.

1. Power to order any point to be proved by affidavit.
2. Power to order attendance of deponent for cross-examination.
3. Matters to which affidavits shall be confined.

---

## ORDER XX.

### Judgment and Decree.

1. Judgment when pronounced and power to pronounce judgment written by Judge's predecessor.
2. Language of judgment.
3. Judgment to be signed.
4. Judgments in non-appealable cases.
Judgments in other cases.
5. Court [illegible]tate its decision on each issue.
6. Cont[illegible] of decree.
7. Da[illegible]ecree.
8. Pr[illegible]ee fo[illegible] where Judge has vacated office before signing decree
9. Dec[illegible] fo[illegible]covery of immovable property.
10. Dec[illegible] delivery of movable property.
11. Decree may direct payment by instalments.
Order after decree for payment by instalments.
12. Decree for possession and mesne profits.
13. Decree in administration suits.

RULES.

*Judgment and Decree.*—(Concld.)

14. Decree in pre-emption suit.
15. Decree in suit for dissolution of partnership.
16. Decree in suit for account between principal and agent.
17. Special directions as to accounts.
18. Decree in suit for partition of property or separate possession of a share therein.
19. Decree when set-off is allowed.
    Appeal from decree relating to set-off.
20. Certified copies of judgment and decree to be furnished.

---

## ORDER XXI.

## Execution of Decrees and Orders.

*Payment under Decree.*

1. Modes of paying money under decree.
2. Payment out of Court to decree-holder.

*Courts executing Decree.*

3. Lands situate in more than one jurisdiction.
4. Mode of transfer.
5. Procedure where Court desires that its own decree shall be executed by another Court.
6. Court receiving copies of decree, etc., to file same without proof.
7. Execution of decree or order by Court to which it is sent.

*Application for Execution.*

8. Application for execution.
9. Oral application.
   Written application.
10. Application for attachment of movable property not in judgment-debtor's possession.
11. Application for attachment of immovable property to contain certain particulars.
12. Power to require certified extract from register of revenue accounts.

RULES.

*Application for Execution.*—(Concld.)


13. Application for execution by joint decree-holder.
14. Application for execution by transferee of decree.
15. Procedure on receiving application for execution of decree.
16. Execution in case of cross-decrees.
17. Execution in case of cross-claims under same decree.
18. Cross-decrees and cross-claims in mortgage-suits.
19. Simultaneous execution.
20. Notice to show cause against execution in certain cases.
21. Procedure after issue of notice.

*Process for execution.*

22. Process for execution.
23. Endorsement on process.

*Stay of execution.*

24. When Court may stay execution.
   Power to require security from, or impose conditions upon, judgment-debtor.
25. Liability of judgment-debtor discharged.
26. Order of Court which passed decree or of Appellate Court to be binding upon Court applied to.
27. Stay of execution pending suit between decree-holder and judgment-debtor.

*Mode of execution.*

28. Decree for payment of money.
29. Decree for specific movable property.
30. Decree for specific performance for restitution of conjugal rights or for an injunction.
31. Discretion of Court in executing decrees for restitution of conjugal rights.
32. Decree for execution of document, or endorsement of negotiable instrument.
33. Decree for immovable property.
34. Decree for delivery of immovable property when in occupancy of tenant.

RULES.

*Arrest and detention in the civil prison.*

35. Discretionary power to permit judgment-debtor to show cause against detention in prison.

36. Warrant for arrest to direct judgment-debtor to be brought up.

37. Subsistence-allowance.

38. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.

*Attachment of property.*

39. Examination of judgment-debtor as to his property.

40. Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined.

41. Attachment of movable property, other than agricultural produce, in possession of judgment-debtor.

42. Attachment of agricultural produce.

43. Provisions as to agricultural produce under attachment.

44. Attachment of debt, share and other property not in possession of judgment-debtor.

45. Attachment of share in movables.

46. Attachment of salary or allowances of public officer or servant of local authority.

47. Attachment of partnership property.

48. Execution of decree against a firm.

49. Attachment of negotiable instruments.

50. Attachment of property in custody of Court or public officer.

51. Attachment of decrees.

52. Attachment of immovable property.

53. Removal of attachment after satisfaction of decree.

54. Order for payment of coin or currency notes to party entitled under decree.

55. Determination of attachment.

*Investigation of claims and objections.*

56. Investigation of claims to, and objections to attachment of, attached property.

Postponement of sale.

57. Evidence to be adduced by claimant.

RULES.

*Investigation of claims and objections.*—(Concld.)


58. Release of property from attachment.

59. Disallowance of claim to property attached

60. Continuance of attachment subject to claim of incumbrancer.

61. Saving of suits to establish right to attached property.


*Sale generally.*


62. Power to order property attached to be sold and proceeds to be paid to person entitled.

63. Sales by whom conducted and how made.

64. Proclamation of sales by public auction.

65. Mode of making proclamation.

66. Time of sale.

67. Adjournment or stoppage of sale.

68. Defaulting purchaser answerable for loss on re-sale.

69. Decree-holder not to bid for or buy property without permission.
Where decree-holder purchases, amount of decree may be taken as payment.

70. Restriction on bidding or purchase by Officers.


*Sale of movable property.*


71. Sale of agricultural produce.

72. Special provisions relating to growing crops.

73. Negotiable instruments and shares in corporations.

74. Sale by public auction.

75. Irregularity not to vitiate sale, but any person injured may sue.

76. Delivery of movable property, debts and shares.

77. Transfer of negotiable instruments and shares.

78. Vesting order in case of other property.


*Sale of immovable property.*


79. What Court may order sales.

80. Postponement of sale to enable judgment-debtor to raise amount of decree.

81. Deposit by purchaser and re-sale on default.

82. Time for payment in full of purchase-money.

83. Procedure in default of payment.

84. Notification on re-sale.

RULES.

*Sale of immovable property.*—(Concld.)

**85.** Bid of co-sharer to have preference.

**86.** Application to set aside sale on deposit.

**87.** Application to set aside sale on ground of irregularity or fraud.

**88.** Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest.

**89.** Sale when to become absolute or be set aside.

**90.** Return of purchase-money in certain cases.

**91.** Certificate to purchaser.

**92.** Delivery of property in occupancy of judgment-debtor.

**93.** Delivery of property in occupancy of tenant.

*Resistance to delivery of possession to decree-holder or purchaser.*

**94.** Resistance or obstruction to possession of immovable property.

**95.** Resistance or obstruction by judgment-debtor.

**96.** Resistance or obstruction by *bona fide* claimant.

**97.** Dispossession by decree-holder or purchaser.

**98.** *Bona fide* claimant to be restored to possession.

**99.** Rules not applicable to transferee *lite pendente*.

**100.** Orders conclusive subject to regular suit.

---

## ORDER XXII.

## Death, Marriage and Insolvency of Parties.

**1.** No abatement by party's death, if right to sue survives.

**2.** Procedure where one of several plaintiffs or defendants dies and right to sue survives.

**3.** Procedure in case of death of one of several plaintiffs or of sole plaintiff.

**4.** Procedure in case of death of one of several defendants or of sole defendant.

**5.** Determination of question as to legal representative.

**6.** No abatement by reason of death after hearing.

**7.** Suit not abated by marriage of female party.

**8.** When plaintiff's insolvency bars suit.

Procedure where assignee fails to continue suit or give security.

**9.** Effect of abatement or dismissal.

RULES.

*Death, Marriage and Insolvency of parties.*—(Concld.)

10. Procedure in case of assignment before final order in suit.
11. Application of Order to appeals.
12. Application of Order to proceedings.

---

ORDER XXIII.

## Withdrawal and Adjustment of Suits.

1. Withdrawal of suit or abandonment of part of claim.
2. Limitation law not affected by first suit.
3. Compromise of suit.
4. Settlement by oath.
5. Proceedings in execution of decrees not affected.

---

ORDER XXIV.

## Payment into Court.

1. Deposit by defendant of amount in satisfaction of claim.
2. Notice of deposit.
3. Interest on deposit not allowed to plaintiff after notice.
4. Procedure where plaintiff accepts deposit as satisfaction in part. Procedure where he accepts it as satisfaction in full.

---

ORDER XXV.

## Security for Costs.

1. When security for costs may be required from plaintiff. Residence out of Travancore.
2. Effect of failure to furnish security.

---

ORDER XXVI.

## Commissions.

*Commissions to examine witnesses.*

1. Cases in which Court may issue commission to examine witness.
2. Order for commission.
3. Where witness resides within Court's jurisdiction.

RULES.

*Commissions to examine witnesses.*—(Concld.)

4. Persons for whose examination commission may issue.
5. Commission or request to examine witness not within Travancore.
6. Court to examine witness pursuant to commission.
7. Return of commission with depositions of witnesses.
8. When depositions may be read in evidence.

*Commissions for local investigations.*

9. Commission to make local investigations.
10. Procedure of commissioner.
    Report and depositions to be evidence in suit.
    Commissioner may be examined in person.

*Commissions to examine accounts.*

11. Commission to examine or adjust accounts.
12. Court to give commissioner necessary instructions.
    Proceedings and report to be evidence.
    Court may direct further inquiry.

*Commissions to make partitions.*

13. Commission to make partition of immovable property.
14. Procedure of commissioner.

*General provisions.*

15. Expenses of commission to be paid into Court.
16. Powers of commissioners.
17. Attendance and examination of witnesses before commissioner.
18. Parties to appear before commissioner.

---

ORDER XXVII.

## Suits by or against the Government or Public Officers in their official capacity.

1. Suits by or against Government.
2. Persons authorised to act for Government.
3. Plaints in suits by or against Government.
4. Agent for Government to receive process.
5. Fixing of day for appearance on behalf of Government.

RULES.

*Suits by or against the Government or Public Officers in their official capacity.*—(Concld.)

6. Attendance of person able to answer questions relating to suit against Government.
7. Extension of time to enable public officer to make reference to Government.
8. Procedure in suits against public officer.

---

## ORDER XXVIII.

### Suits by or against Military Men.

1. Officers or soldiers who cannot obtain leave may authorise any person to sue or defend for them.
2. Persons so authorised may act personally or appoint pleader.
3. Service on person so authorised, or on his pleader, to be good service.
4. Execution against officer or soldier serving in military capacity.

---

## ORDER XXIX.

### Suits by or against Corporations.

1. Subscription and verification of pleading.
2. Service on corporation.
3. Power to require personal attendance of officer of corporation.

---

## ORDER XXX.

### Suits by or against Firms and Persons carrying on business in names other than their own.

1. Suing of partners in name of firm.
2. Disclosure of partners' names.
3. Service.
4. Right of suit on death of partner.
5. Notice in what capacity served.
6. Appearance of partners.
7. No appearance except by partners.

RULES.

*Suits by or against Firms and Persons carrying on business in names other than their own.*—(Concld.)

8. Appearance under protest.
9. Suits between co-partners.
10. Suit against person carrying on business in name other than his own.

ORDER XXXI.

**Suits by or against Trustees, Executors and Administrators.**

1. Representation of beneficiaries in suits concerning property vested in trustees, etc.
2. Joinder of trustees, executors and administrators.
3. Husband of married executrix not to join.

ORDER XXXII.

**Suits by or against Minors and Persons of Unsound Mind.**

1. Minor to sue by next friend.
2. Where suit is instituted without next friend, plaint to be taken off the file.
3. Guardian for the suit to be appointed by Court for minor defendant.
4. Who may act as next friend or be appointed guardian for the suit.
5. Representation of minor by next friend or guardian for the suit.
6. Receipt by next friend or guardian for the suit of property under decree for minor.
7. Agreement or compromise by next friend or guardian for the suit.
8. Retirement of next friend.
9. Removal of next friend.
10. Stay of proceedings on removal, etc., of next friend.
11. Retirement, removal or death of guardian for the suit.
12. Course to be followed by minor plaintiff or applicant on attaining majority.
13. Where minor co-plaintiff attaining majority desires to repudiate suit.
14. Unreasonable or improper suit.
15. Application of Rules to persons of unsound mind.

## ORDER XXXIII.

### Suits by Paupers.

RULES.

1. Suits may be instituted *in forma pauperis.*
2. Contents of application.
3. Presentation of application.
4. Examination of applicant.
   If presented by agent, Court may order applicant to be examined by commission.
5. Rejection of application.
6. Notice of day for receiving evidence of applicant's pauperism.
7. Procedure at hearing.
8. Procedure if application admitted.
9. Dispaupering.
10. Costs where pauper succeeds.
11. Procedure where pauper fails.
12. Government may apply for payment of court-fees.
13. Government to be deemed a party.
14. Copy of decree to be sent to Government Pleader.
15. Refusal to allow applicant to sue as pauper to bar subsequent application of like nature.
16. Costs.

## ORDER XXXIV.

### Interpleader.

1. Plaint in interpleader suit.
2. Payment of thing claimed into Court.
3. Procedure where defendant is suing plaintiff.
4. Procedure at first hearing.
5. Agents and tenants may not institute interpleader suits.
6. Charge for plaintiff's costs.

## ORDER XXXV.

### Special Case.

1. Power to state case for Court's opinion.
2. Where value of subject-matter must be stated.
3. Agreement to be filed and registered as suit.
4. Parties to be subject to Court's jurisdiction.
5. Hearing and disposal of case.

## ORDER XXXVI.

### Arrest and Attachment before Judgment.

*Arrest before judgment.*

RULES.

1. Where defendant may be called upon to furnish security for appearance.
2. Security.
3. Procedure on application by surety to be discharged.
4. Procedure where defendant fails to furnish security or find fresh security.

*Attachment before judgment.*

5. Where defendant may be called upon to furnish security for production of property.
6. Attachment where cause not shown or security not furnished.
7. Mode of making attachment.
8. Investigation of claim to property attached before judgment.
9. Removal of attachment when security furnished or suit dismissed.
10. Attachment before judgment not to affect rights of strangers, nor bar decree-holder from applying for sale.
11. Property attached before judgment not to be re-attached in execution of decree.

---

## ORDER XXXVII.

### Temporary Injunctions and Interlocutory Orders.

*Temporary Injunctions.*

1. Cases in which temporary injunction may be granted.
2. Injunction to restrain repetition or continuance of breach.
3. Before granting injunction, Court to direct notice to opposite party.
4. Order for injunction may be discharged, varied or set aside.
5. Injunction to corporation binding on its officers.

*Interlocutory Orders.*

6. Power to order interim sale.
7. Detention, preservation, inspection, etc., of subject-matter of suit.
8. Application for such orders to be after notice.

RULES.

*Interlocutory Orders.*—(Concld.)

9. When party may be put in immediate possession of land, the subject-matter of suit.
10. Deposit of money, etc., in Court.

ORDER XXXVIII.

**Appointment of Receivers.**

1. Appointment of receivers.
2. Remuneration.
3. Duties.
4. Enforcement of receiver's duties.
5. When Division Peishkar may be appointed receiver.

ORDER XXXIX.

**Arbitration.**

*Arbitration in suits.*

1. Parties to suit may apply for order of reference.
2. Appointment of arbitrator.
3. Order of reference.
4. Where reference is to two or more, order to provide for difference of opinion.
5. Power of Court to appoint arbitrator in certain cases.
6. Powers of arbitrator or umpire appointed under Rule 4 or 5.
7. Summoning witnesses and default.
8. Extension of time for making award.
9. Where umpire may arbitrate in lieu of arbitrators.
10. Award to be signed and filed.
11. Statement of special case by arbitrators or umpire.
12. Power to modify or correct award.
13. Order as to costs of arbitration.
14. Where award or matter referred to arbitration may be remitted.
15. Grounds for setting aside award.
16. Judgment to be according to award.

*Order of reference on agreements to refer.*

17. Application to file in Court agreement to refer to arbitration.
18. Stay of suit where there is an agreement to refer to arbitration.
19. Provisions applicable to proceedings under Rule 17.

RULES.

*Arbitration without the intervention of a Court.*

20. Filing award in matter referred to arbitration without intervention of Court.
21. Filing and enforcement of such award.
22. Forms.

---

ORDER XL.

## Appeals from Original Decrees.

1 Form of appeal.
What to accompany memorandum.
Contents of memorandum.
2. Grounds which may be taken in appeal.
3. Rejection or amendment of memorandum.
4. One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.

*Stay of proceedings and of execution.*

5. Stay by Appellate Court.
Stay by Court which passed the decree.
6. Security in case of order for execution of decree appealed from.
7. No security to be required from the Government or a public officer in certain cases.
8. Exercise of powers in appeal from order made in execution of decree.

*Procedure on admission of appeal.*

9. Registry of memorandum of appeal.
Register of appeals.
10. Appellate Court may require appellant to furnish security for costs.
Where appellant resides out of Travancore.

*Restoration of appeal rejected.*

11. Day for hearing appeal.
12. Appellate Court to give notice to Court whose decree appealed from.
Transmission of papers to Appellate Court.
Copies of exhibits in Court whose decree appealed from.

RULES.

*Restoration of appeal rejected.*—(Concld.)

13. Publication and service of notice of day for hearing appeal.
Appellate Court may itself cause notice to be served.

14. Contents of notice.

*Procedure on hearing.*

15. Right to begin.

16. Dismissal of appeal for appellant's default.
Hearing appeal *ex parte*.

17. Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs.

18. Re-admission of appeal dismissed for default.

19. Power to adjourn hearing, and direct persons appearing interested to be made respondents.

20. Re-hearing on application of respondent against whom *ex parte* decree made.

21. Upon hearing, respondent may object to decree as if he had preferred separate appeal.
Form of objection and provisions applicable thereto.

22. Remand of case by Appellate Court.

23. Where evidence on record sufficient, Appellate Court may determine case finally.

24. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.

25. Findings and evidence to be put on record.
Objections to finding.
Determination of appeal.

26. Production of additional evidence in Appellate Court.

27. Mode of taking additional evidence.

28. Points to be defined and recorded.

*Judgment in appeal.*

29. Judgment when and where pronounced.

30. Contents, date and signature of judgment.

31. What judgment may direct.

32. Power of Court of Appeal.

33. Dissent to be recorded.

RULES.

*Decree in appeal.*

34. Date and contents of decree.
Judge dissenting from judgment need not sign decree.

35. Copies of judgment and decree to be furnished to parties.

36. Certified copy of decree to be sent to Court whose decree appealed from.

ORDER XLI.

**Appeals from Appellate Decree.**

1. Procedure.

ORDER XLII.

**Appeals from Orders.**

1. Appeals from orders.

2. Procedure.

ORDER XLIII.

**Pauper Appeals.**

1. Who may appeal as pauper.
Procedure on application for admission of appeal.

2. Inquiry into pauperism.

ORDER XLIV.

**Reference.**

1. Reference of question to High Court.

2. Court may pass decree contingent upon decision of High Court.

3. Judgment of High Court to be transmitted, and case disposed of accordingly.

4. Costs of reference to High Court.

5. Power to alter, etc., decree of Court making reference.

## ORDER XLV.

### Review.

RULES.

1. Application for review of judgment.
2. To whom applications for review may be made.
3. Form of applications for review.
4. Application where rejected.
   Application where granted.
5. Application for review in Court consisting of two or more Judges.
6. Application where rejected.
7. Order of rejection not appealable.
   Objections to order granting application.
8. Registry of application granted, and order for re-hearing.
9. Bar of certain applications.

---

## ORDER XLVI.

### Miscellaneous.

1. Process to be served at expense of party issuing.
   Costs of service.
2. Orders and notices, how served.
3. Use of forms in Appendices.

---

## ORDER XLVII.

### Suits triable as Small Causes.

1. Suits triable as Small Causes.

---

# THE FIRST SCHEDULE.

## ORDER I.

### Parties to Suits.

Who may be joined as plaintiffs.

1. All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise.

---

**Schedules:** "There are 3 Schedules appended to the Code proper, of which the First Schedule is the most important one."

**The First Schedule:** "This Schedule is divided into 47 Orders and each Order is again divided into Rules. To these are added nine Appendices, containing forms that may be adopted in respect of the several documents mentioned in the Orders and Rules. The forms relating to plaints, written statements and decrees are substantially more than what are now sanctioned by the Circulars issued by the High Court".— *Notes on Clauses.*

**Order I:** "This deals with the subject of parties to suits, and does not materially differ from the provision of the present Code. Such changes as have been made are introduced to help bringing before the Court in one suit all the persons whose presence may be found necessary to fully deal with matters in dispute." *Notes on Clauses.*

**Or. I, r. 1** [ = S. 22 = *Or. I, r. 1* = En. Or. 16, r. 1 ]

I. 1. Section 22 of the old Regulation, the first sentence of which corresponds to Rule 1, was as follows:—

"22. *Persons who may be joined as plaintiffs.*—All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally or in the alternative, in respect of the same cause of action. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who is not found entitled to relief, unless the Court in disposing of the costs of the suit otherwise directs."

2. The old Section was the same as Section 26 of the Indian Code of 1882.

II. In the Statement of Objects and Reasons appended to the Indian amending Bill of 1901, it was observed:—"The present Section corresponds with Or. XVI of the Rules of the Supreme Court before it was amended in 1896, with the omission of the words 'in respect of the same cause of action'. This reference to the 'cause of action' has given rise to some difficulty, for it would appear that the meaning assigned to it in different parts of the Code is not always the same. In England a cause of action means 'every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the

judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved.' It 'has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff', but it 'refers entirely to the grounds set forth in the plaint as the cause of action, or, in other words, to the *media* upon which the plaintiff asks the Court to arrive at a conclusion in his favour'. It is proposed here to omit the reference in question and to use the phrase 'cause of action' in its proper sense only throughout the Code. At the same time the opportunity has been taken to modify and extend the language on the principle underlying the English rule as now amended and judicially explained".— *India Gazette dated 21-12-1901, Pt. V.*

III. The second sentence of the old Section 22, corresponds to Clause (*a*) of Rule 4 *Infra*, which Rule should be read with Rule 1. For the provision contained in the third sentence of the old Section, see Section 32 *Supra*.

IV. A plaintiff is a man who comes to Court seeking a relief or reliefs. Persons who do not claim any relief and say that a third person and not themselves are entitled to relief in a suit can be called "plaintiffs" only by courtesy or as a matter of form.— **23 T. L. R.**, *146.*

V. Rule 1 of Order XVI of the Rules of the Supreme Court, 1883, as amended, is as follows :—

"1. *Joinder of plaintiffs.*—All persons may be joined in one action as plaintiffs, in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative where if such persons brought separate actions any common question of law or fact would arise; provided that, if upon the application of any defendant it shall appear that such joinder may embarrass or delay the trial of the action, the Court or a Judge may order separate trials, or make such other order as may be expedient. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who shall not be found entitled to relief, unless the Court or a Judge in disposing of the costs shall otherwise direct."

The above Rule (as amended) is intended to "facilitate the joinder of plaintiffs in one action in cases where (1) the right to relief claimed by them arises in each of their cases out of the same transaction or series of transactions, and where (2) some common question of law or fact arises. In order to bring a case within the Rule both these conditions must be complied with, and if they are not the Rule does not justify the joinder of several plaintiffs."— *Yearly Practice, 1926.*

### Case Law.

1. New parties could not be brought in, in special appeal (in the last stage of the case). If the plaintiffs have no *locus standi* in the suit, *i. e.*, if the plaintiffs are not entitled to sue at all, the person really entitled to sue cannot be allowed to become plaintiff and the suit proceeded with. This will be a novel procedure unknown to any Civil Code.— **5 T. L. R.**, *19.*

2. (1) A suit brought jointly by some of the partners of a firm, for settlement of accounts and distribution of assets, is not bad for mis-joinder. As, until the final settlement of accounts, the unity of interest as partners continues, it is not strictly logical to say that the interest of any particular partner is distinct from that of his co-partners. There is no objection in principle to some of the partners jointly suing for settlement of accounts and distribution of their assets. Section 22 of the Civil Procedure Code authorizes the joinder of all persons

as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative, in respect of the same cause of action; and the granting of relief as he or they may be entitled to.

(2) In such a suit, all the partners are necessary parties, either as plaintiffs or defendants, those in possession of partnership assets and who are bound to render accounts occupying the position of plaintiffs, and the others, that of defendants.

(3) Sections 209 and 210 of the Civil Procedure Code [ = Or. XX, rr. 15 and 16 ] contemplate the passing of preliminary orders in suits for account. If, on taking such accounts, it is found that the receipts of plaintiff exceeded what is due to him in respect of his advances and profits, the final decree should direct him to refund to the defendant the excess he (plaintiff) has drawn. Such final decree determining the rights and liabilities of all the partners, will be capable of execution at the instance of any partner (whether plaintiff or defendant) to whom money may be due.—

**11 T. L. R.,** *48.*

**3.** Where a District Judge ruled, differing from the Munsiff, that the plaintiff, *the Pattola* of a *Samooham*, is competent to sue for recovery of property on behalf of the *Samooham*:

*Held.*—(1) The relative position of *Pattola* and *Samooham* being that of a servant and master, the former cannot sue on behalf of the latter without their authority, express or implied, it being a procedure wholly unauthorized by law.

(2) Even if there be an admission on the defendant's part as to the plaintiff's authority or competency to sue, the plaintiff cannot maintain the suit on the face of the decided unwillingness of the *Samoohakars* to sue.

(3) Inasmuch as the plaintiff persistently prosecuted the suit despite the objections of the *Samoohakars*, the costs of suit should be met from plaintiff's private funds and not from those of the *Samooham*.—

**13 T. L. R.,** *73.*

**4.** In a suit by plaintiffs to recover value of properties of which they were plundered by the defendant and in some of which the plaintiffs were jointly and in the others severally interested, the defence was one of mis-joinder of plaintiffs and distinct causes of action.

*Held.*—The suit was not bad for misjoinder.

The decision of the question turns upon the construction of Sections 22 and 27 (= Or. I, rr, 1 & 9] and upon the interpretation to be placed on the expression "cause of action." The expression "cause of action" is not used in its comprehensive or elastic but in a restricted or limited sense "so as to include the fact constituting the infringement of the right but not necessarily also those constituting the right itself, so that the qualification implied in the words in respect of the same cause of action will be satisfied if the facts which constitute the infringement of the right of several plaintiffs are the same, though the fact constituting the rights upon which they base their claim to that relief in the alternative may not be the same." (22 Cal. 838).

Even if the elastic meaning of "cause of action" is adopted, the suit would not be opposed to the principles of Section 22 and 27, C. P. C.— **14 T. L. R.,** *185.*

**5.** (1) A Karaima Samudayam as such cannot sue as plaintiff to cancel an alienation of Devaswom property without the consent and against the will of the Ooralars.

(2) Such a Samudayam may sue tenants for rents and renewal fees where such power is vested in him by the usage of the particular Devaswom, such power being recognised on the ground of implied delegation.

Section 22 shows that a plaintiff must be one in whom the right to relief is alleged

Power of Court to order separate trials.

**2.** Where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the Court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient.

---

to exist in the same manner as a defendant must be one against whom the same right exists [Section 24 (=Rule 3)]. The proprietary right to a Devaswom and its properties is vested in the Ooralars; and Samudayom is a manager subject to the supervision of the Ooralars. The so-called proprietary right of the Karaima Samudayam is confined only to the tenure of his office as Samudayam just as in the case of a Karaima Shanty or priest. Both the ordinary and Karaima Samudayam are deeply interested in the proper conservation of the Devaswom properties. Nevertheless, the former by virtue of his hereditary office can have no more rights than the latter to interfere with the properties of the Devaswom to a greater extent than is allowed to a mere manager in the absence of an express or implied contract empowering him to represent the Devaswom (F. B.).— **18 T. L. R.**, *129*.

Fol.—8 T. L. J., 214.

**6.** Suit for declaration that a sale deed, alleged to have been executed by 1st plaintiff in favour of the defendants, and which had been compulsorily registered, was a forgery and for recovery of the plaint properties taken possession of by the defendants on the strength of that sale. The 2nd plaintiff was the daughter of the 1st plaintiff, and there was an averment in the plaint that some of the properties in the suit had been made a gift of by the 1st plaintiff to the 2nd plaintiff. The District Judge, holding that because in regard to some of the properties a gift deed was alleged to have been executed by the 1st plaintiff to the 2nd plaintiff, the suit was bad for mis-joinder of causes of action, returned the plaint for amendment.

*Held.*—There was no mis-joinder of causes of action.

For the declaration of title sought for in the plaint and for the sustaining of the gift alleged in favour of the 2nd plaintiff, it was equally necessary that the sale in favour of the defendants referred to in the plaint should be set aside.— **28 T. L. R.**, *148*.

**7.** A Samudayam cannot maintain a suit for recovery of Devaswom property and arrears of rent without consulting the Ooralars. A Samudayam may sue for rent only when such a power has been vested in him by the usage in the particular Devaswom.— **8 T. L. J.**, *214*.

**8.** A benamidar can bring a suit in his own name without bringing on record the real owner who, though not a party to the litigation, is fully affected by the rules of *res judicata*. In such a suit it is open to the real owner to apply to be joined in the action.— **10 T. L. J.**, *338*.

**9.** See also—

Or. I, r. 3.—10 T. L. J., 72.
,, r. 10.—23 T. L. R., 150.
Or. II, r. 3.—15 T. L. R, App., 49.
,, r. 6.—15 T. L. R., 118.

---

**Or. I, r. 2** [ = ,, = *Or. I, r. 2* = En. O. 16, r. 1]

For the corresponding English Rule, see under previous Rule.

---

Who may be joined as defendants.

3. All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons, any common question of law or fact would arise.

**Or. I, r. 3** [= S. 24 = *Or. I, r. 3* = En. Or. 16, r. 4]

I. 1. Section 24 of the old Regulation, the first sentence of which corresponds to this Rule, was as follows :—

"24. *Persons who may be joined as defendants.*—All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative, in respect of the same matter. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment."

2. The old Section was the same as Section 28 of the Indian Code of 1882.

II. The second sentence of the old Section 24, given above, corresponds to Clause (*b*) of Rule 4 *Infra*, which Rule should be read with Rule 3. Order II, r. 3 should be read subject to this Rule.

III. Rule 3 reproduces the corresponding Rule in the British Indian Code. In regard to the latter, the Indian Special Committee observed :—" The Committee realize that the words " in respect of the same matter " in Rule 3 have given rise to great difficulty, and they think it advisable to follow the wording of the English Rule and to omit them."

IV. Rule 4 of Order XVI of the Rules of the Supreme Court, 1883, is as follows :— "4. *Joinder of defendants.*—All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment".

**Case Law.**

1. The assignor being liable to account to the assignee on the failure of the claim founded on the assignment, his inclusion as defendant is not bad for mis-joinder.

The assignor, in the case, is not in the position of a perfect stranger and his inclusion, although not legally indispensable, is not altogether erroneous. He has an interest in the result of the suit and there is no provision of law prohibiting the inclusion of a peron in his position as a defendant. Reason and logic point to the conclusion, that in many cases the fact of the assignor being a party to the suit brought by the assignee would check unnecessary litigation. The modern tendency of decisions and legislation is to discourage pleas of mis-joinder. Further, the plea was not taken in the Court below. As a rule all such formal objections ought to be taken before the settlement of issues, as they are capable of amendment.— **3 T. L. R.,** ***16.***

2. A purchaser of properties had agreed to pay a portion of the purchase money to a creditor of the vendor, but the creditor having declined to accept payment from the purchaser, the vendor himself paid the money due to the creditor. A suit was brought for recovery of the unpaid portion of the purchase money from the purchaser who was dead at the time the plaint was filed. When the death was ascertained,

plaintiff impleaded 2nd defendant (the purchaser's son) as the legal representative of the deceased.

*Held.*—The suit should have been thrown out, and the Court was wrong in having allowed plaintiff to substitute another in the place of the defendant and continue his action.

Strictly speaking, as soon as it was proved that a man impleaded as defendant was dead at the time the plaint was filed, the Court ought to refuse to proceed further in the suit and should leave it to the plaintiff to begin *de novo* against the person against whom alone he can legally move.

"Where an action is commenced in the name of a dead man, his representatives cannot be substituted as plaintiffs," and a defendant also cannot be substituted for a man who was impleaded as defendant after his death. The Setions of the Civil Procedure Code relating to the bringing in of legal representatives of deceased parties are applicable only where the death takes place *pending the suit*, and not where, even before suit, the party supposed to be impleaded had died.

The appeal, however, was proceeded with, as if the 2nd defendant was originally impleaded as a party. The second defendant did not put forward the objection in the lower Court, and in the special appeal that ground was not definitely taken. The defendant having found his way on to the record as defendant, it is best to leave him there and treat him as if properly before the Court. To do otherwise, at this stage of the proceedings would put all parties to much expense and cause delay.—

**22 T. L. R.**, *200*.

Affirmed.—17 T. L. J., 158.

**3.** When the summons to the defendant was returned with the endorsement that he was dead before the suit was instituted, the suit should be thrown out. Plaintiff should not be allowed to substitute another and continue his action. Section 49 old [= Or. VI, r. 17 and Section 117] is not applicable.

**2 S. D.**, *59*.

Appl.—36 T. L. R., 117.

**4.** Suit by a sub-mortgagee against his mortgagor, the first mortgagee, for recovery of money personally and from the property mortgaged, and for recovery of property mortgaged from strangers who committed trespass upon it while he was in possession under the sub-mortgage :

*Held.*—There is no provision in the Code allowing distinct causes of action against distinct sets of defendants, that is to say, causes of action in which the defendants are not all jointly interested to be united in the same suit.— **2 S. D.**, *258*.

**5.** The suit was for arrears of rent paid formerly to Sirkar by defendant but remitted in 1076 under a Royal Proclamation. Defendant contended that, in spite of the alleged Proclamation, the Sirkar claimed rent from defendant who was compelled to pay it to the Sirkar. The District Judge directed that the Sirkar should be made a party :

*Held.*—The Sirkar was a necessary party. The Sirkar appears to have collected the Varom on the ground that the Varom claimed did not fall under any of the denominations mentioned in the Proclamation. The plaintiff claimed on the strength of an alleged remission by the Sirkar, and the Sirkar denied having made any such remission. The Sirkar is interested in the decision of the question, and without the Sirkar as a party to the suit, this question could not be finally adjudicated.— **3 S. D.**, *293*.

**6.** Where the plaintiff sued to recover arrears of Thiruppuvarom from the defendant at the old rate and the latter contended *inter alia* that, as the Sirkar had reduced the rate since 1072, the plaintiff could not claim it at the old rate for the period subsequent to the reduction, the lower Court entered judgment in favour of defendant :

*Held.*—In such a suit, according to the wording of Section 24 C. P. C., and to prevent further litigation concerning the same matter [Section 38=Or. II, r. 1], the Sirkar was a necessary party.

Section 38 makes it imperative to frame the suit as far as practicable in such a manner as to afford ground for a final decision upon the subjects in dispute to prevent further litigation concerning them. To carry out the object of that Section, it would be highly necessary to implead the Sirkar in the case.— **K. P.**, *481.*

Ref.—5 T. L. J., 273.

**7.** In a suit for redemption by one sharer alone, all the co-sharers must be made parties.— **K. P.**, *496.*

**8.** An attaching creditor has no such interest in or lien on the mortgaged property as would entitle him to be impleaded as a party to the mortgagee's suit.

An attachment confers no lien or interest in favour of the creditor but merely puts the property in *custodia legis* available to the decree-holder in execution proceedings duly taken.— **K. P.**, *584.*

Ref.—26 T. L. R., 88
(=1 T. L. J., 234).
Rel.—9 T. L. J., 286.
36 T. L. R., 56.
43 T. L. R., 42
(=16 T. L. J., 510).

**9.** *Per Raman Tampi, J.*—The prayer of the plaintiff virtually amounted to one for a mandatory injunction directing the Sirkar to enter the plaintiff's name in the Thandaper and to levy the Sirkar tax from him. Such a prayer could not be granted in the suit to which the Sirkar was not a party.— **35 T. L. R.**, *221.*

**10.** The Karanavan of a Tarwad brought a Dhana Nischaya Pathrom into existence, whereby he asserted among others that the properties to which it related were his self-acquisitions. He alienated several items of properties on foot of that deed. After his death, plaintiffs sued for declaration of the right and title of the Tarwad to the properties and for recovery of them from the alienees. It was contended that the suit was bad for multifariousness.

*Held.*—The suit against all the alienees was in respect of the same matter and, therefore, not bad for multifariousness.

Under Section 22 [ = Or. I, rr. 1 & 4] of the Code, joinder of plaintiffs is allowed when the relief is claimed in respect of the same cause of action; while under Section 24 joinder of defendants is permitted when the relief is sought in respect of the same matter. By using the less definite expression 'in respect of the same matter', the Legislature obviously intended that joinder of defendants should not be confined to cases where relief was claimed in respect of the same cause of action. The words 'in respect of the same matter' are wider than the words 'in respect of the same cause of action'. If so, the scope of Section 24 must be wider than that of Section 22. Having regard to the provisions of the Code, a suit against several defendants will not be bad for mis-joinder, if the suit, although in respect of different causes of action against different defendants, is in respect of the same matter. The object of Section 24 seems to be to avoid multiplicity of suits if it could be done, without embarrassment to any of the defendants. The title of the alienees, in the case, and other defendants was derived from the Karanavan, and it would stand or fall with the failure or success of the plaintiffs' claim against the Karanavan. The infringement of the plaintiffs' right by the Karanavan was the real cause of action; and in any event, the suit against all the defendants was in respect of the same matter.— **10 T. L. J.**, *72.*

**11.** The suit was to compel the defendants to accept the renewal of a Kanom. The defendants denied the Kanom and also contended that part of the property alleged

4. Judgment may be given without any amendment—

Court may give judgment for or against one or more of joint parties.

(a) for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to;

(b) against such one or more of the defendants as may be found to be liable, according to their respective liabilities.

5. It shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against him.

Defendant need not be interested in all the relief claimed.

---

to be comprised in the Kanom did not belong to the plaintiff but was waste land registered as Pandarapattom by the Sirkar in their favour.

At the instance of the defence, the District Court ordered the Sirkar to be impleaded as an additional defendant. On appeal:

*Held.*—The Sirkar was not a necessary or desirable party to the suit.— **11 T. L. J.**, *87.*

Ref.—19 T. L. J., 153.

**12.** The suit was for declaration of the right to future maintenance and recovery of arrears of maintenance by a junior member of a Nair Tarwad.

*Held.*—In a suit of this nature, all the adult members of the Tarwad are necessary parties.— **16 T. L. J.**, *545.*

**13.** The suit was for a renewal of a Kanappattom and for recovery of arrears of Michavarom and renewal fees. The defendant contended that the property had been registered as Pandarapattom and that he was enjoying the same under the Sirkar, and that the Sirkar should be impleaded as a party to the suit. One of the issues raised was whether the property was Jenmom property as defined in the Jenmi and Kudiyan Regulation or Pandarapattom property.

*Held.*—The Sirkar was a desirable party, though not a necessary party. As the defendant had sought to have the Sirkar impleaded without unnecessary delay, the Sirkar might be impleaded as an additional defendant (F. B.).— **19 T. L. J.**, *153.*

**14.** See also—

Or. I, r. 10.—**19 T. L. J.**, *1086.*

**Or. I, r. 4** [ = Ss. 22 & 24 = *Or. I, r. 4*]

**1.** For the provisions in the corresponding Sections 22 and 24 of the old Regulation see under Rules 1 and 3 above.

**2.** Clause (*a*) of the Rule should be read with Rule 1 and Clause (*b*) with Rule 3.

**Or. I, r. 5** [ = ,, = *Or. I, r. 5*= En. Or. 16, r. 5]

Rule 5 of Order XVI of the Rules of the Supreme Court, 1883, is as follows:—"5. It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the Court or a Judge may make such order as may appear just to prevent any defendant from being embarrassed or put to

6. The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis and promissory notes.

Joinder of parties liable on same contract.

7. Where the plaintiff is in doubt as to the person from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties.

When plaintiff in doubt from whom redress is to be sought.

---

expense by being required to attend any proceedings in which he may have no interest."

**Or. I, r. 6** [= S. 25 = *Or. 1, r. 6* = En. Or. 16, r. 6 ]

Rule 6 of Order XVI of the Rules of the Supreme Court, 1883, is as follows:—"6. The plaintiff may, at his option, join as parties to the same action all or any of the persons, severally or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes."

**Case Law.**

Where a hypothecatee, plaintiff, purchased a moiety of the property hypothecated to him from one of the two hypothecators in discharge of one-half of the debt with interest thereon, and sought to recover the other moiety of the debt from the other hypothecator, defendant, by sale of the remaining moiety and the latter pleaded that he could not be sued alone and that the splitting up of the liability was improper and illegal:

*Held.*—Section 43 of the Contract Act, which is applicable to the case, provides that "when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise." Reading this Section with Section 25, C. P. C., it is clear that the plaintiff had the option to sue one or more or all of the persons who had made themselves jointly and severally liable under a contract made with him. The non-joinder of the defendant was not fatal to the suit; and the plaintiff was at liberty to recover the other moiety.

It is not for a debtor to say that the suit against him for money should be thrown out because some other person is jointly and severally liable with him to the plaintiff on the same contract. It is the plaintiff's own look-out to see what remedy he should seek, and if he chooses to sue one of his several debtors the suit is not bad or unsustainable for reason of the non-joinder of the other debtors. The Court which tries the suit has the discretion to order the other debtors also to be brought on the record as parties if, in its opinion, their non-inclusion is likely to prejudice the debtor actually sued in the matter of contribution or in any other way.— **13 T. L. R.,** *53.*

**Or. I, r. 7** [ = „ = *Or. 1, r. 7*, = En. Or. 16, r. 7 ]

Rule 7 of Order XVI of the Rules of the Supreme Court, 1883, is as follows:—"7. Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that the question as to which,

One person may sue or defend on behalf of all in same interest.

8. (1) Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested. But the Court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(2) Any person on whose behalf or for whose benefit a suit is instituted or defended under Sub-rule (1) may apply to the Court to be made a party to such suit.

---

if any, of the defendants is liable, and to what extent, may be determined as between all parties."

**Or. I, r. 8** (1) [= S. 26 = *Or. I, r. 8 (1)* = En. Or. 16, r. 9]

" r. **8** (2) [= S. 28, Para 4 = *Or. I, r. 8 (2)*= En. Or. 16, r. 9]

I. **1.** In Sub-Rules (1) and (2), the words "or for the benefit of" occurring after the words "on behalf of" are new, not found in the corresponding Sections of the old Regulation.

**2.** The word "persons" has been substituted for the word "parties" throughout Sub-Rule (1), "as the more appropriate expression". (Indian Select Committee on the 1901 amending Bill.)

II. Rule 9 of Order XVI of the Rules of the Supreme Court, 1888, is as follows:—"9. Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorised by the Court or a Judge to defend in such cause or matter, on behalf or for the benefit of all persons so interested."

**Case Law.**

**1.** Suit on behalf of a charitable institution whose management is vested in a particular community of a particular locality, to set aside certain alienations of property appertaining to the said Institution, made by the cash-keeper thereof (defendant in the suit). The suit is preferred by the Gramanies who hold a power of attorney which authorizes them to represent 83 out of 200 members of the community.

*Held.*—As the defendant holds his office by virtue of his appointment thereto by the whole community, the suit as against him started under the authority of a minority of the community, is bad for non-joinder of the necessary parties. In a suit of the kind, all the members of the community should be made parties to the proceedings, either as plaintiffs or defendants:

The fact of the Gramanies who are the supervising and controlling authority of the Institution, being themselves members of the community, cannot cure the defect of party in the suit.

The suit was instituted before the passing of Regulation II of 1065. The old Code (Regulation II of 1037) did not contain a provision similar to Section 26. To make the decree in the suit which was brought under the old law, binding on the whole community, every member has to be made a party to the litigation. This procedure,

besides being tedious, might fail to secure the object in view, by the unintentional omission of one or two members from the list of additional parties. The most convenient course for the plaintiffs would be to bring, if necessary, a fresh suit under the provisions of Section 26 (F. B.).— **11 T. L. R.**, *23.*

Fol.—**12 T. L. R.**, *145.*

**2.** Section 26 of the Civil Procedure Code has no application to cases of Malabar Tarwads.— **11 T. L. R.**, *112.*

**3.** Plaintiffs, who are appointed Kizhi and Pattola respectively of a Samuham by the president of its managing committee, without consulting any members thereof, sued to recover a sum of money due to the Samuham under a bond. The contention of defendants is that the plaintiffs were incompetent to sue on behalf of the Samuham.

*Held.*—The Kizhi and Pattola being only servants of the institution, cannot be accepted as its legal representatives authorized to sue under Section 415, C. P. C., [Or. XXIX, r. 1] unless expressly constituted as such by the members. The Kizhi and Pattola being themselves members of the Samuham, may sue on its behalf, but subject to the provisions of Section 26. In such case, the Court of first instance should give notice to all the members of the Samuham before trying the suit.— **12 T. L. R.**, *145.*

**4.** The original suit was by a Metropolitan and two priests for a declaratory decree that the 2nd defendant is not competent to appoint priests to officiate in the Kayankulam Church and for an injunction against the 1st defendant prohibiting him from exercising the office of priest in the said Church. Certain persons calling themselves the Yogakars and Kystanakars of the Church applied to the Court that they and other parishioners should be made parties to the suit. The District Judge ordered the issue of a notice regarding the institution of the suit to all persons having an interest in it. The plaintiffs appealed against that order.

*Held.*—As the parishioners would be seriously affected by decision in favour of the plaintiffs, the District Judge's order was right.

Third persons who have an interest in the suit are entitled to be made parties, and the Court should not confine itself merely to the questions arising between the parties on the record.— **15 T. L. R. App.**, *1.*

Ref.—18 T. L. R., 222.

**5.** Section 26, C. P. C., is merely an enabling Section and the permission of the Court may be given after the institution of the suit so as to have a retrospective effect.

The lower Courts have ignored the effect of the petition for issue of notice under Section 26. The lower Courts observe that nothing was done, but it appears from the records that on notice was published in the Court-house, cutcherry and in the village. It should as a matter of fact also have been inserted in the Government Gazette.— **4 S. D.**, *49.*

**6.** The beneficiaries and worshippers of a temple have independently of Section 511, Civil Procedure Code, [new Section 72], a right of suit against the trustees, individually for infringement of individual rights and as a body for malversation and removal of trustees. In the latter case the whole body is competent to sue through some of them with the consent of the Court under Section 26.

The community of Vellalas and Chetties in Travancore and Cochin, though consisting of an indefinite number of persons, is sufficiently well defined to permit some of their members to sue under Section 26, with the consent of the Court on behalf of the rest (F. B.).— **30 T. L. R.**, *91* ( = **4 T. L. J.**, *305*).

Fol.—35 T. L. R., 133 (=9 T. L. J., 134).

7. Suit by cashier and accountant of a mosque belonging to the Mahomedan inhabitants of a particular village against the Sirkar for recovery of certain tank beds alleged to have been sold by Sirkar to the other defendants. The plaintiffs did not take any steps under Section 26, C. P. C. to give notice of suit to the villagers. In the course of the suit and on the application of the plaintiff, a third person alleged to be the Jenmi of the plaint property over which the mosque had only a Kanom right was impleaded as third plaintiff. On behalf of the Sirkar, two preliminary objections were raised to the maintainability of the suit, *viz.*, that as the provisions of Section 26, were not complied with, 1st and 2nd plaintiffs were not entitled to maintain the suit on behalf of the villagers, and that as regards the third plaintiff, he could not maintain the suit as no notice under Section 409 [new Section 65] had been served upon the Sirkar. The District Judge upheld these contentions and dismissed the suit. On appeal by first and second plaintiffs :

*Held* (upholding the decision of the Court below).—As the suit was one on behalf of the mosque belonging to the villagers, the endowment must be duly and properly represented either by the whole body of villagers or by persons who in civil proceedings have the right to represent the institution.

The villagers were not on record either actually or constructively, the necessary procedure under Section 26, C. P. C., never having been taken or sought to be taken either in the Court below or in the Appellate Court.

Therefore, the suit was not maintainable in its present form.

Apart from Section 26; C. P. C., the plaintiffs 1 and 2 by themselves had no right to represent the mosque as the offices of cashier and accountant did not necessarily, or even usually, carry with them the right to institute suits of the present description especially when, as in the present case, there was a general manager for the institution. The institution in which the right to sue was alleged to exist was not duly represented on record. The 3rd plaintiff had no community of interest with the villagers who own the mosque, his only connection with the subject-matter of the litigation being the Kanom interest. His junction therefore could not cure the defect. Nor could he carry on the suit in his own right for the reason that he had omitted to give the requisite notice to the Sirkar.

The notice of suit sent by plaintiffs 1 and 2 would not enure to the benefit of the 3rd plaintiff as Section 409 [new Section 65] expressly laid down that the name and place of abode of the intending plaintiff should be clearly stated in the notice.—

**31 T. L. R., 245**
**(=6 T. L. J., 1).**

8. Omission to apply for permission to sue under Section 26 of the Civil Procedure Code is not by itself ground for dismissing the suit. That Section is permissive, and in no way prohibitive in its terms ; and besides, it deals only with procedure and does not affect substantive rights. When, however, objection is taken by the defendants, the suit can proceed only on such leave being obtained.

Permission under Section 26, Civil Procedure Code, may be asked for and granted after the institution of the suit, as the granting of leave under the Section is not made a condition precedent.

In the case, the necessary notice had been given under Section 26, though a formal order permitting the plaintiffs to sue in a representative capacity had not been obtained. The plaintiffs should have been directed to rectify the error in procedure, and neither side would have been prejudiced by such direction.— **10 T. L. J., 69.**

Fol.—36 T. L. R., 132
(=10 T. L. J., 157).

9. No suit shall be defeated by reason of the mis-joinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy as far as regards the rights and interests of the parties actually before it.

Mis-joinder and non-joinder.

---

**9.** The leave of the Court under Section 26, C. P. C., may be granted after the institution of the suit.

Though legally it is not essential to obtain leave before the suit is filed and the necessary leave may be obtained afterwards, yet the proper course is undoubtedly to file the suit with permission, and the lower Courts will be well advised if they adhered to it.

In the case, along with the plaint which itself disclosed the fact that the suit was brought as a representative suit on behalf of the plaintiffs and other parishioners similarly interested like the plaintiffs, a formal application for permission was made and notice of the institution of the suit was given in the Gazette as required by Section 26. The former order granting permission was recorded only on the date of final argument. No doubt, the use of the word "sue" in the Section includes the whole suit and every thing done in the suit, and consequently would seem to imply that leave should be given before any thing is done in the suit; but it cannot be contended that, when that is not done, the matter should not be set right afterwards.—

**36 T. L. R.,** *132*
**( = 10 T. L. J.,** *157*).

**10.** Where a trust is partly of a public nature and partly private a suit relating to it cannot be sustained in the absence of sanction under Section 511 C. P. C., [new Section 72] or permission of the Court under Section 26 C. P. C.— **10 T. L. J.,** *251*.

**11.** It is not necessary that the permission to sue under Section 26 should be one given in express words. It is sufficient if it is gatherable from the proceedings that such permission was given. The granting of the leave under the Section is not a condition precedent.

Persons conducting a suit on behalf of themselves and others with the leave of the Court obtained under Section 26, can enter into a compromise so as to bind those whom they represent, and there is no difference between the powers of the representatives in the original litigation and in appeal. The sole question in such cases would be whether the compromise was unreasonable, fraudulent or dishonest, so as to entitle the members of the class to repudiate the action of the representatives.

"When the terms of the adjustment have been settled by an arbitration award out of Court, the parties may agree to have a consent decree. In such a case, the true position appears to be that the Court will not look at the arbitration proceedings, but only at the consent terms, as it makes no difference whether these terms have been arrived at by agreement between the parties acting by themselves or have been settled by a third party chosen by them." (15 Bom., 245).

In this view of the law, the so-called "award" in the case may be acted upon as a compromise, on which a valid decree may be based.— **16 T. L. J**, *501*.

---

**Or. I, r. 9** [ =S. 27 = *Or. I, r. 9* = En. Or. 16, r. 11 ]

I. The corresponding Section 27 of Regulation II of 1095 ran as follows:—

"27. ***Suit not to fail by reason of mis-joinder.***—No suit shall be defeated by reason of the mis-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the

10. (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

Suit in name of wrong plaintiff.

(2) The Court may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

Court may strike out or add parties.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability, without his consent.

(4) Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and, of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

Where defendant added, plaint to be amended.

---

rights and interests of the parties actually before it.

Nothing in this Section shall be deemed to enable plaintiffs to join in respect of distinct causes of action."

II. For Rule 11 of the English Rules, see under next Rule.

**Case Law.**

1. Under Section 27, C. P. C., (old), a suit should not be dismissed on the ground of mis-joinder of parties. If the mis-joinder is of causes of action, the Court should, under Section 42, C. P. C., [ *Cf.* Or. II, r. 7] order the confinement of the action to such causes of action, as may be conveniently disposed of (F. B.).—**30 T. L. R.,** *91* (=**4 T. L. J.,** *305*).

2. See also—

Or. I, r. 1.—**14 T. L. R.,** *185.*

" r. 10.—**44 T. L. R.,** *275* (=**18 T. L. J.,** *736*).

Or. II, r. 3.—**15 T. L. R. App.,** *49.*

Or. I, r. 10 (1) [ = S. 23 = *Or. I, r. 10 (1)* = En. Or. 16, r. 2 ]

,, 10 (2) & (3) [ = S. 28 (1) to (3) = *Or. I, r. 10 (2) & (3)* = En. Or. 16, rr. 11, 39 ]

,, 10 (4) [ = S. 29 = *Or. I, r. 10 (4)* = En. Or. 16, rr. 11, 39 ]

I. Sub-Rule (1) of Rule 10 corresponds to Section 23 of Regulation II of 1065. The old Section has the words (1) "at any time" in place of the words "at any stage of the suit", and (2) "commenced through a *bona fide* mistake" in place of the words "instituted through a *bona fide* mistake". The words "or persons" occurred after the words "any other person" in the old Section.

II. Paras (1) to (3) of Section 28 of the old Regulation, which correspond to Sub-Rules (2) and (3) were as follow :—

"28. *Court may dismiss or add parties.*—The Court may, on or before the first hearing, upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant, improperly joined, be struck out;

and the Court may at any time, either upon or without such application, and on such terms as the Court thinks just, order that any plaintiff be made a defendant or that any defendant be made a plaintiff, and that the name of any person, who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

*Consent of person added as plaintiff or next friend.*—No person shall be added as a plaintiff, or as the next friend of a plaintiff, without his own consent thereto."

III. 1. Sub-Rule (4) corresponds to Section 29 of the old Regulation which was as follows:—

"29. *Where defendant added, plaint to be amended.*—Where a defendant is added the plaint, if previously filed, shall, unless the Court direct otherwise, be amended in such manner as may be necessary, and an amended copy of the summons shall be served on the new defendant and the original defendants."

2. In regard to the amendments made, the Statement of Objects and Reasons of the 1901 amending Bill said :—"The words 'previously filed' have been omitted as unnecessary and the insertion of some words is proposed with the object of investing the Courts with a discretion in the matter of requiring the service of an amended copy of the plaint where, for instance, the amendment is of trivial importance and is made in the presence of the defendants."—

*India Gazette dated 21-12-1901, Pt. V.*

IV. In the British Indian Code, Rule 10 has also a Sub-Rule (5) as follows:—

"(5) Subject to the provisions of the Indian Limitation Act, 1877, Section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons."

A similar provision was made in the original Bill. But the Select Committee deleted it as "it was considered unnecessary to change the existing law in this respect."

V. The object of this provision (Section 28 old) is to avoid multiplicity of suits so far as the matter prayed for in the action is concerned. The Court has in each case to decide, with reference to the particular facts of the case, whether the presence of the person concerned is necessary to effectively adjudicate on the matter sought for, *i. e.*, whether he is so much concerned in the same as to require him to be placed on

record so as to make 'the determination complete and to quiet the question.' The principle underlying this provision is thus explained:—'All persons materially interested in the subject-matter ought generally to be parties to the suit, plaintiffs or defendants, however numerous they may be, so that the Court may be enabled to do complete justice by deciding upon and settling the rights of all persons interested, and the orders of the Court may be safely executed by those who are compelled to obey them, and future litigation may be prevented.' The general rule regarding joinder of parties requires all persons to be impleaded who have an interest in the subject-matter of a suit; and such interest should be an existing one. Further, the interest should be such as would directly make the decision in the action affecting him. If, however, embarrassment or inconvenience will be brought about, the application will have to be refused. "To bring persons on to the record, whose interests are not identical with either plaintiff or defendant, necessarily complicates the proceedings, and greatly impedes the progress of the suit. This disadvantage very frequently outweighs the advantages arising from finality of litigation, which is, upon the whole, the best justification for bringing in fresh parties. This alone ought to make the Courts of first instance very careful in the exercise of the power granted by the Section."—**18 T. L. J.**, *671.*

VI. Rules 2, 11 and 39 of Order XVI of the Rules of the Supreme Court, 1883, are as follow:—

"2. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the Court or a Judge may, if satisfied that it has been so commenced through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as may be just."

["To bring a case within this Rule, it must be shown (1) that the action was commenced in the name of the original plaintiff by mistake and (2) that the substitution or addition is necessary for the determination of the real matter in dispute. The mistake may be either one of fact or of law."—

*Yearly Practice for 1925.*]

"11. No cause or matter shall be defeated by reason of the mis-joinder or non-joinder of parties, and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a Judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a Judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added. No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability, without his own consent in writing thereto. Every party whose name is so added as defendant shall be served with a writ of summons or notice in manner hereinafter mentioned, or in such manner as may be prescribed by any special order, and the proceedings as against such party, shall be deemed to have begun only on the service of such writ or notice."

"39. The Court or a Judge may require any person to be made a party to any action or proceeding, and may give the conduct of the action or proceeding to such person as he may think fit, and may make such order in any particular case as he may think just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matter in question."

VII. A defect in the frame of the suit, pointed out as a preliminary objection to it and cured by the plaintiff by ready compliance with the Court's order passed without demur on behalf of the defendant, could not be permitted to be relied upon in appeal to defeat the judgment on merits against him.

No objection to a suit on the ground of mis-joinder or non-joinder of parties should be allowed to defeat a claim. The Court before which the suit comes has ample powers of rectifying such defects by bringing in the proper parties or by excluding the unnecessary parties.

Preliminary technical objections ought to be taken at the earliest opportunity by the party interested in taking it and should be considered and disposed of by the Court without unnecessary delay, so that the plaintiff might not be prejudiced in his claim by lapse of time; and when they are once taken and disposed of, the party affected by the decision should, without loss of time, protest against such decision either by representations to the Court which made it or by an appeal to the higher Court, if by law an appeal is allowed; otherwise, the party should be taken to have allowed the decision to remain unquestioned.

The plaintiff could not, at every stage of the litigation, be called upon to answer a preliminary objection to the frame of the suit or to support an interlocutory order of the original Court disposing of an objection.
**9 T. L. R., *138*.**

VIII. For Form of Notice to person who should be added as co-plaintiff, see Appendix B, Form No. 4.

**Case Law.**
(*Sec. 23.*)

**1.** The non-joinder of a person as party to a suit cannot be allowed to defeat a claim and is a mistake which the Court has plenary powers to rectify. Even if the suit was instituted in the name of a wrong person as plaintiff, as contended in the case, and that act was due to a *bona fide* mistake, it was in the power of the Court to have allowed that mistake to be corrected as soon as it came to its knowledge. In the case, the institution of the suit by the first plaintiff who was not one altogether unconnected with the convent but one next in rank to the superior (2nd plaintiff) was but a *bona fide* mistake, as apparent from the facts. The 2nd plaintiff was therefore rightly brought as party on the objection of the defendant (*Vide* Section 23 which was only an amplification of Section 63 of the old Regulation).— **9 T. L R., *138*.**

**2.** (1) No appeal is provided by law against orders under Section 23, C. P. C.

(2) Where the suit was originally instituted by a person who had no right to do so, when it appears that the institution was due to a *bona fide* mistake, the Court has power under Section 23 C. P. C., to substitute or add the names of any person who ought to have been joined as a plaintiff.—
**9 T. L. J., *148*.**

**Case Law.**
(*Sec. 28.*)

**1.** Where a plaintiff sues a wrong man, it is not the business of the Court, to bring in the right one.— **1 T. L. R., *77*.**

**2.** An undivided member in possession of common and joint property of the family may maintain a suit in his own name or on behalf of the whole family in respect of such property.

This is one of procedure rather than of substantive law. The general rule in equity undoubtedly is that all persons are to be made parties either as plaintiffs or defendants who are either legally or equitably interested in the subject-matter and result of the suit, but this rule has its exceptions. In several cases it has been held that when the right and interest of a joint and undivided family is in issue, their interests may

be taken to have been sufficiently represented by one of the members acting *bona fide*, either as plaintiff or defendant in the suit.
**4 T. L. R.**, *39*

**3.** A executed a bond to B for a certain sum of money. B assigned over the bond to C. C sued A alone for the recovery of the amount with interest under the deed of assignment. At the request of A who averred that the bond was executed by him for the price of goods purchased for the purpose of a joint trade carried on by him and D, the latter was added by the Court as 2nd defendant. D denied A's allegation of joint trade and his liability for the debt. The Zillah Judge held both A and D jointly liable.

*Held.*—The suit being simply for money due to C under the express terms of a bond executed by A, D cannot, by any stretch of language, be said to be a person "entitled to or claiming some share or interest in the subject-matter of the suit," nor is he a person likely to be affected by the result within the meaning of Section 61 (Regulation II of 1037).

A personal decree for money against A can, in no way, affect D (A's partner in trade) even supposing such partnership to exist.— **7 T. L. R.**, *8*.

**4.** Section 409 C. P. C., [new Section 65] has no application to cases where the Court orders during the progress of a suit, the inclusion of the Sirkar as a defendant, as a necessary party. The suit was not instituted against the Dewan; but the Court at the first hearing of the suit, ordered the Dewan to be made a defendant, in the exercise of its discretion under Section 28. Sections 409 and 28 read and construed together seem clearly to allow operation to the former, subject to the provision of the latter which gives a wide discretion to the Court. To construe them otherwise would be to limit the exercise of the discretion vested in Courts by Section 28 and to render it impossible to the Sirkar to intervene as a party to any suit.— **8 T. L. R.**, *122*.

Fol. —17 T. L. R., 168.
1 S. D., 273.
Dist.—1 S. D., 37.
Ref. —2 S. D., 266.

**5.** The suit was to recover money due under a hypothecation bond, by sale of the interest of 1st and 2nd defendants in the hypothecated property. Defendants 3 to 5 were made parties on their own application, as they claimed portions of the hypothecated property under titles adverse to 1st and 2nd defendants. The question having arisen in appeal by the 5th defendant as to whether, in the circumstances of the case, his admission as a party was right.

*Held* (*Kunhiraman Nair, J.* dissenting).—Section 63 of the (old) Code of Civil Procedure clearly requires the person who has any right to the property in dispute in a pending suit, to be made a party to such suit to enable him to protect his interests, and therefore, the appellant (5th defendant) was entitled to be joined as a party.

*Per Kunhiraman Nair, J.*,—The Section simply permits the Courts to let in, as additional plaintiffs or defendants, persons who in addition to being the claimants to the subject-matter of the suit, ***are likely to be prejudicially affected by the result of the suit***, and it is no authority for bringing in as additional parties any body and every body who may happen to claim the property in suit as his or their own by purchase or otherwise. To bring persons upon the record whose interests are not identical with those of either plaintiff or defendant, necessarily complicates the proceedings and greatly impedes the progress of a suit, and the Courts in Travancore, with their experience of the litigious character of the bulk of the public, should be very careful in the exercise of the power granted by the Section and should not bring in the intervenors, unless they (the Courts) are quite satisfied that the intervenors would be prejudiced by the result of the suit.

*Cosby, J.*—I construe the words "or who claims some share or interest in the subject-matter of the suit, and who may be likely to be affected by the result" which occur in Section 63 of the Civil Procedure Regulation (II of 1037) to refer to not only such persons on whom the result of the suit would be legally binding, but to all persons whose interest in the subject-matter of the suit is such that their absence from the suit is likely to cause them material injury. * *

The 5th defendant claimed No. 8 property as his own, not adversely to the plaintiff, but adversely to defendants 1 and 2. If the plaintiff obtains a decree against defendants 1 and 2, and the 5th defendant be not a party to the suit, the decision will certainly not bind him; but it may seriously affect his possession and enjoyment. The plaintiff may at any moment execute his decree and attach the 5th defendant's property and bring it to sale. Is the 5th defendant to be excluded from the suit, and the plaintiff to have a decree which would place the defendant's possession in constant peril which might lower the value of his property and which he could not get cancelled in so far as it affects him until the plaintiff chooses to execute it when probably he (defendant) may have to fight out his right to the property in the Courts for years?

*Krishnaswamy Rao, C. J.*—The object of Section 63 is to prevent multiplication of litigation in respect of one and the same property and to save judicial proceedings from being brought into disrepute by the collusion and fraud of the parties. It is one thing to say to a plaintiff to wait until his rights are actually invaded as the law should not be set in motion so long as there is a chance of an appeal to it becoming unnecessary; but it is quite another thing to refuse to hear the person who complains that, in the litigation pending before the Court, attempts are being made to deprive him of his property under the color of law and to practice a fraud upon the Court.

[Section 63 of Regulation II of 1037 was as follows:—"If it appear to the Court at any hearing of a suit that all the persons who may be entitled to, or who claim some share or interest in the subject-matter of the suit, and who may be likely to be affected by the result, have not been made parties to the suit, the Court may adjourn the hearing of the suit to a future day to be fixed by the Court, and direct that such persons shall be made either plaintiffs or defendants in the suit as the case may be. In such case, the Court shall issue a notice to such persons in the manner provided in this Regulation for the service of a summons on a defendant."].

**9 T. L. R., *60*.**

Fol.—3 S. D., 299.
15 T. L. R. App., 1.
Ref.—24 T. L. R., 131.
29 T. L. R., 85
(= 3 T. L. J., 367).
18 T. L. J., 671.

**6.** It is only in cases in which the rights of intervenors to bring the suit are not disputed that they can be made plaintiffs. The proper course when such right is disputed, is to make them defendants.—

**9 T. L. R. App., *45*.**

**7.** The Civil Procedure Regulation does not provide for an appeal against an order refusing to add a party to a suit either as plaintiff or defendant or to transfer a defendant from the array of defendants to that of plaintiffs.— **9 T. L. R. App., *46*.**

[See Order XLII, r. 1, Clause (1)].

**8.** The power conferred on Courts to bring in additional parties can be exercised only in favour of those who are not indispensable parties, but whose interests are likely to be affected by the result of the litigation.— **11 T. L. R., *92*.**

Ex. —14 T. L. R., 128.
Fol.—17 T. L. R., 18.
Not fol.—20 T. L. R., 203.

**9.** Section 28 of the Civil Procedure Code gives ample powers to the Court to join additional parties to the suit at any time, if the Court finds it necessary to do so, in order to enable it effectually and completely to adjudicate upon and settle all the questions involved in the suit.

In the case, the order for making the additional parties was made, after the case was finally heard.— **13 T. L. R.,** *144.*

**10.** Plaintiff sued first defendant to recover property leased out to him. The lease was admitted and found genuine and 1st defendant in possession. Instead of giving a decree against first defendant, the Judge gave a decree to him and defendants 2 to 4 who were made parties to the litigation on the first defendant's allegation that they were in possession of the land.

*Held.*—The lower Court should not have brought in defendants 2, 3 and 4 as parties and tried all the pleas of title raised by the defence. Even after the written statements were filed, the plaintiff did not pay institution fees on the value of title and thereby seek to convert the suit into one of title. The Judge below considered questions of title as incidental to the lease on which plaintiff based his claim. Incidental expressions of opinion on questions of title should, as a rule, be avoided as it not only serves no useful purpose but also causes great waste of public time and judicial energy. As the plaintiff never claimed any relief against defendants 2 to 4, their inclusion in the decretal part was wrong.

As the special frame of the suit did not permit of the introduction of defendants 2 to 4 into the suit, their inclusion was wrong. If, at the time of the execution of the decree, the plaintiff finds that the property was not in the possession of the first defendant, and defendants 2 to 4 obstructed him in taking possession of the same, he should follow the procedure laid down in Sections 317, 320 and 321 of the Civil Procedure Code [= Or. XXI, rr. 94, 96, 97, 98 and 100]. With a view to simplify the execution of the decree, those who have no interest in the question actually raised by the plaint should not be brought on the record especially when such a course is likely to convert the suit of one character into another. As the scale of Court fees varies according to the nature of the litigation and the valuation of a suit for purposes of jurisdiction is mostly regulated by the Court Fees Act, the Courts cannot be too careful in allowing the introduction of new parties, which may have the effect of not only changing the nature of the litigation but also affecting the jurisdiction of the Courts. If, in the case, the plaintiff had been required to pay institution fees on the value of his title, which was disputed by defendants 2 to 4, the suit would be beyond the jurisdiction of the Munsiff.— **14 T. L. R.,** *14.*

Ref.—1 S. D., 339.
18 T. L. J., 671.
Dist.—25 T. L. R., 255.

**11.** A trustee of a religious institution, unlike other trustees, may maintain a suit for the benefit of the beneficiaries without joining them as parties to the suit (F. B.).— **14 T. L. R.,** *83.*

Fol.—23 T. L. R., 171.
Ref.—30 T. L. R., 91
(= 4 T. L. J., 305).
8 S. D., 24.

**12.** The right possessed by L to receive Michavarom payable on the plaint properties was sold by his hypothecatee Q who assigned his right to R in 1068. The same properties were sold in 1060 under a decree obtained by another against L and certain items of them were purchased by T and certain others by another who sold them to B. R sued to recover from T and B the Michavarom of the plaint property payable to L in whose place R claimed to stand by virtue of the court-sale of 1065 and the assignment of 1068.

*Held.*—As T and B were not made parties to the suit, in the execution of the decree of which Q purchased the plaint property and assigned his rights over it to R, the decree could not bind T and B.— **14 T. L. R.,** *162.*

**13.** Under Section 28 of the Civil Procedure Code, any person whose presence before the Court may be necessary in order to

enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, must be added as parties.

Where one of the two daughters of a Hindu Makkathayam father brought a suit for the cancellation of a sale of a paternal property by her mother and the other sister (2nd defendant) against the latter and the vendee, and the District Judge found that the sister who joined in the execution of the sale was unnecessarily made a defendant in the suit:

*Held.*—The view taken by the District Judge was bad in law owing to defect of parties. The cause must be proceeded with, after making the said sister a defendant in the suit.

It is plain that the presence of the 2nd defendant in the case is necessary "to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit", as pointed out in Section 28. "Is it meant by these words that a person not originally impleaded is to be made a party only if the questions raised in the suit cannot otherwise be completely and effectually determined between the parties to the suit or is it meant completely and effectually determined so that they shall not be again raised in that or in any other suit between the parties to the suit or any of them and third parties? To accept the more restricted interpretation involves the addition of words which we do not find in the Section, *viz.*, between the parties to the suit, and there can be few, if any, questions which cannot be determined between the parties to the suit one way or the other, and of which the determination, if they be material, will as between the parties to the suit, not be final. On the other hand, the interpretation warranted by the terms would enable the Court to avoid conflicting decisions on the same question which would work injustice to a party to the suit and finally and effectually put an end to litigation respecting them", (5 Mad. 52).—

**15 T. L. R.,** *81.*

Ref.—24 T. L. R., 131.
1 S. D., 339.
18 T. L. J., 671.

14. Where the daughters of a deceased Mahomedan sued for the cancellation of a Court sale of his property held in execution of a decree obtained for his debts in a suit which was sufficiently contested by their mother on their behalf and in good faith, even though they were no parties to the same:

*Held.*—As a Mahomedan widow who is also a sharer of her husband's estate like any of his other heirs could bind that estate including the estate of her minor daughters, if, being in possession of the whole estate, she defended *bona fide* the suit brought for such debts, the daughters (the plaintiffs) must be bound by the decree and the execution sale.— **15 T. L. R.,** *127.*

Dist.—21 T. L. R., 223.
Ref.—24 T. L. R., 131.

15. A junior member of a Marumakkathayam Tarwad can sue for rent due to the Tarwad provided the Karanavan is made a party to the suit and is found to have been acting against the interest of the Tarwad. He can also take out process and realise the amount due in execution, but the money should not be taken out of the Court except on the joint application of the said junior member and the Karanavan.—

**15 T. L. R.,** *176*

Ref.—23 T. L. R., 133.
24 T. L. R., 195.

16. The original suit was by a Metropolitan and two priests for a declaratory decree that the 2nd defendant is not competent to appoint priests to officiate in the Kayenculem Church and for an injunction against the 1st defendant prohibiting him from exercising the office of priest in the said Church. Certain persons calling themselves Yogakars and Kysthanakars of the Church applied to the Court that they and the other parishioners should be made parties to the suit. The District Judge ordered the issue of a notice regarding the institution of the suit to all persons having an interest in it. The plaintiffs appealed against that order:

*Held.*—As the parishioners would be seriously affected by a decision in favour of the plaintiffs, the District Judge's order was right.

"Where a trust has been created for specific purposes, a suit in respect of the trust could not be effectually decided in the absence of all the persons interested." (15 Cal. 329).— **15 T. L. R. App.**, *1.*

Ref.—18 T. L. R., 222.

**17.** Where a District Judge dismissed a suit for declaration of title and cancellation of Patta issued by the Settlement Department on the sole ground that the Sirkar was not made a party to it:

*Held.*—The Judge was wrong as the Sirkar is not a necessary party to suits for declaration of title to land as between private parties. The mere insertion in the plaint of a relief for the cancellation of a Patta which is not essential for the declaration of the plaintiff's title for which the suit was brought, is no ground for the dismissal of the suit.— **16 T. L. R.**, *39.*

Fol. —20 T. L. R., 57.
Dist.— 2 S. D., 274.
Ref. —2 S. D., 85.

**18.** In a suit for cancellation of Pattah, there was no express prayer in the plaint for declaration of title; but the allegation in the issue paper disclosed an issue as to title. The appellant, therefore, prayed for an amendment of the plaint.

*Held.*- In a case like this, the amendment of the plaint by adding a prayer for declaration could be allowed.

Except in the case of unregistered land which Government claims as waste land, *i. e.*, in the case of contending claimants to registered area, the rights of the Government are not affected, and therefore, they need not be made parties to a suit for cancellation.— **17 T. L. R.**, *8.*

Dist.—2 S. D., 274.

**19.** The three months' notice prescribed by Section 409, C. P. C., [new Section 65] must be given to the Sirkar only in suits instituted against the Sirkar; but where the Sirkar was added as a party under Section 28, C. P. C., no such notice is necessary. The Section appears to give an unfettered discretion to the Court to bring in any party at any time into a pending suit.— **17 T. L. R.**, *168.*

Ref.— 2 S. D., 266.

**20.** The suit was brought by plaintiff as Manushyam and Ooralen of a Dewaswam to compel a renewal of certain Dewaswam lands and recover arrears of rent and renewal fees. The District Judge was of opinion that all the Ooralers should be made parties to the suit:

*Held.*—As the other Ooralers are joint trustees of the Dewaswam with the plaintiff, they, as opined by the District Judge, are necessary parties to the suit.— **17 T. L. R. App.**, *38.*

**21.** In a suit for removal of Karanavan, certain distant Koottukars who failed to show a *prima facie* case of community of interest in the suit Tarwad were made additional defendants in the suit. In the appeal preferred by them impugning the lower Court's finding against their membership, they offered to pay Court-fees on the total value of the Tarwad properties:

*Held.*—As no such fees could be levied in appeal from either party, the only course was to have the question of the rights of the Koottukars, for settlement in a separate suit on payment of proper Court-fees. "To bring parties on to the record whose interests are not identical with either plaintiff or defendant necessarily complicates the proceedings and greatly impedes the progress of the suit. This disadvantage very frequently outweighs the advantages arising from finality of litigation which is upon the whole the best justification for bringing in fresh parties."— **18 T. L. R.**, *253.*

Ref.—19 T. L. J., 195.

**22.** When a mortgagee obtained a registry in his name as Puthuval, of land adjoining the mortgaged property reclaimed

by him and in the suit for redemption of the mortgage, contended *inter alia* that the mortgagor is not entitled to recover the Puthuval land.

*Held.*—As the mortgagor agreed to pay the assessed tax, the Sirkar was not a necessary party. "It stands to reason that the Sirkar is a necessary party in suits where its rights are called into question. Where however the dispute lies between private parties claiming the registry of Puthuval lands and the Sirkar's right to assess the property is admitted by both parties, the Sirkar's participation in the suit is unnecessary."— **20 T. L. R.,** *57.*

**23.** The Karanavan being a necessary party in all suits concerning Tarwad properties, it would be the duty of an original Court to make him a party (if he was not impleaded already) under Section 28.

In a suit for Tarwad property in which the Karanavan was not a party in the original Court, the Appellate Court can make him a party (F. B.).— **20 T. L. R.,** *203.*

**24.** In an ejectment suit, the plaintiff being entitled to claim recovery of possession of the whole land, all persons who oppose him in the enforcement of that right are concerned in his cause of action and are necessary parties to the suit.—

**23 T. L. R.,** *150.*

**25.** The Sirkar is a necessary party to suits for cancellation of the attachments made under the Revenue Recovery Regulation, and the practice has been to make the Sirkar a party to such suits in order to afford to the Sirkar the opportunity of showing that the proceedings of the Revenue officers are just and lawful.— **1 S. D.,** *112.*

**26.** A Government Officer whose order made within the scope of his authority is sought to be set aside in a regular suit, is not a necessary party to that suit; but the Government represented by the Dewan should be made a party, if the plaintiff wants any relief against the Department in which the said Officer is employed.—

**1 S. D.,** *235.*

**27.** Section 28 gives the Court power to introduce new parties, but not so as to introduce a new cause of action.

The suit must be tried as put forward in the plaint. Questions involved in the suit in Section 28 must be taken to mean questions directly arising out of and incident to the original cause of action, in which either in character of plaintiff or defendant the person to be joined has an identity or community of interest with that party in litigation, on whose side he is to be ranged. In the case, the person to be added has no identity of interest with either of parties in the cause of action set forth in the plaint which had reference solely to the lease.—

**1 S. D.,** *339.*

Ref.—18 T. L. J., 671.

**28.** There is no second appeal against orders under Section 28, striking out or adding the name of any person as plaintiff or defendant.

As regards the request of the appellant's Vakil that the appeal might be treated as an application for revision, the Court saw no objection to adopting that course. But the application was held unsustainable, as the 3rd and 4th defendants were necessary parties in the case, and as the lower Courts had not acted irregularly or illegally *i. e.*, had not wrongly used their discretion in bringing them on the record as defendants.

**1 S. D.,** *342.*

**29.** The Sirkar is a necessary party to suits relating to Puthuval lands in which the Sirkar's right to assess the properties is questioned.— **2 S. D.,** *85.*

Ref.—19 T. L. R., 153.

**30.** Where the first plaintiff in suit prayed to have her name expunged from the records, and her prayer was really one for withdrawal of her suit or the suit so far as she was concerned:

*Held.*—Such an order is not appealable, *i. e.*, Section 28 is not a withdrawal Section, and does not therefore apply. Strictly

speaking, the order is one falling within the purview of Section 357, C. P. C. [= Or. XXIII, r. 1], and as such no appeal will lie.

If the 2nd plaintiff claims adversely to both the 1st plaintiff and defendants, he should not have been made a party, much in the same way that where A sues his lessor for possession of land, C intervenes claiming it as his, C should not be made a party to the suit.— **2 S. D.,** ***237.***

**31.** Plaintiff entered into a contract with the Sirkar (through the Peishkar of Padmanabhapuram) for the performance of certain works. Defendant received the remuneration for the work from the Sirkar on the ground that the Peishkar entered into a similar agreement for the same with defendant. Subsequently plaintiff brought a suit for the recovery of the amount.

***Held.***—The Sirkar is a necessary party: there is no privity of contract between plaintiff and defendant.

The lower Court in the case held the plaint suit in its present form would not lie and returned the plaint for amendment and presentation to the proper Court by making the Sirkar a party. The effect of returning the plaint to the plaintiff for presentation to the proper Court, leaving it to plaintiff to make the Sirkar a party will not secure the plaintiff against the bar of limitation.—

**2 S. D.,** ***266.***

**32.** Plaintiff sued for cancellation of Pattah granted to defendant in respect of certain land which he claimed as part of his registered holding. The defendant contended that it was Sirkar Puthuval and he was granted Pattah after levying Vilayarthom. The District Judge reversing the Munsiff's decree which awarded possession of plaint property to plaintiff, remanded the suit for making the Sirkar a party to the suit.

***Held.***—(1) The Sirkar is a necessary party.

(2) An Appellate Court has all the powers of an original Court, and the proper order to have passed was for the Judge himself to direct the Sirkar to be added as a party and return the plaint for presentation to himself after such amendment.—

**2 S. D.,** ***274.***

Ref.—11 T. L. J., 87.
19 T. L. J., 153.

**33.** Plaintiff, a mortgagee, created a sub-mortgage upon the mortgaged properties. Without impleading the sub-mortgagee as a party, he brought a suit for the recovery of money upon the mortgage-bond. The defendant pleaded discharge which was disbelieved. The Munsiff, however, dismissed the suit on the ground that the plaintiff should have made the sub-mortgagee also party to the suit and that it was too late for the Court to make the sub-mortagee a party on its own motion, as the plaintiff by his default to appear as a witness and to mention the sub-mortgage in the pleadings, has forfeited his claim to any such indulgence.

***Held.***—(1) On the finding that the plea of discharge was false, the sub-mortgagee ought to have been made a party to the suit by the Court. In the interests of justice, the plaintiff should be allowed an opportunity to add the sub-mortgagee as a party. In the face of the finding, the question is whether the discretion given to the Court to add parties should not be exercised in furtherance of a just claim merely because the claimant has been guilty of even wilful default. There cannot be two answers to this question.

(2) For the plaintiff's default, the suitable punishment will be to saddle him with the costs of the opposite party occasioned by such default and that will be the costs of the appeal, the costs of the lower Court following the decision on the merits.—

**3 S. D.,** ***40.***

**34.** In a suit for the cancellation of a lease deed, the purchaser of the rights of the lessor for the arrears of rent under the lease is a necessary party.— **3 S. D.,** ***54.***

**35.** Suit was to set aside an Udampadi executed to defendants 10 to 12 by 1st defendant (Karanavan) to remove him from Karanavanship and to recover possession of the properties conveyed under the Udampadi to the defendants 10 to 12.

The 13th defendant claimed to be added as a party on the ground that the Udampadi and the suit are mere tricks to recover the property whose title has vested in his family on account of the failure of the plaintiff's Tarwad to execute a decree for redemption. The District Judge granted the prayer.

*Held.*—The Civil Procedure Code gives the Court the necessary power to add such a party as defendant.

In mortgages, the ordinary rule has been held to be that a plaintiff mortgagee cannot be allowed so to frame his suit as to draw into controversy the title of a third party, who is in no way connected with the mortgage and who has set up a title paramount to that of the mortgagor and mortgagee. But the ruling appears to be based upon considerations relating to the scope of a mortgage suit which is only to cut off the equity of redemption and bar the right of the mortgagee and those claiming under him. But on actions for ejectment the persons who have a right to defend are persons named in the writ and any person who is in possession by himself or his tenant.—
**3 S. D.**, *899*.

Ref.—18 T. L. J., 671.

**36.** Plaintiff sued to recover his one-sixth share in a certain Oodukoor property purchased by him in Court auction. Defendants ***inter alia*** contended that two other properties in which the judgment-debtor for whose decree-debt his share in the plaint property was sold in auction, had a share, should be included in the suit, and the persons in possession made parties thereto. The District Judge upholding the contentions of defendants remanded the suit.

*Held.*—It is only where a partition is sought by a member of joint undivided Hindu family that all the properties should be included in a suit for partition.—
**4 S. D.**, *373*.

**37.** In a suit on a negotiable instrument against the executant by the payee or his legal representative, the defendant cannot raise the contention that the payee was merely the benamidar of a third person.—
**K. P.**, *368*.

**38.** In a suit for maintenance by some out of several members of a Marumakkathayam Tarwad against the Karanavan thereof, all the other members of the Tarwad are not necessary parties. The suit is not bad for the non-joinder of all the members of the Tarwad.

But all the members on whose behalf maintenance is claimed should be brought on record so as to enable the Karanavan to state and prove his objections to their individual claims.— **26 T. L. R.**, *44*
(=**1 T. L. J.**, *322*).

Dist.—8 T. L. J., 312.
Ref.—14 T. L. J., 464.
Diss.—14 T. L. J., 310.
16 T. L. J., 545.

**39.** Plaintiffs sued for redemption of a mortgage and joined as defendants the mortgagee and also A and B, persons in possession of the mortgaged property. A and B contended that the property mortgaged was not the plaint property but a different one and that they were in possession of the plaint property under a sale from a stranger C who was therefore made an additional defendant. The Court upholding the defence dismissed the suit. On appeal the District Judge ordered the removal of A, B and C from the record on the ground that they had been improperly impleaded in the suit and decreed the suit.

*Held.*—As A and B were made defendants by plaintiff himself and C was made an additional defendant without any demur from

the plaintiff, the plaintiff could not subsequently be allowed to object to the presence of A, B and C on the record, and the lower Court acted wrongly in removing them from the record.

*Quaere.*—Whether persons who set up paramount title to the mortgaged property are necessary parties to a suit for redemption of the property.—**29 T. L. R.**, *85* (=**3 T. L. J.**, *367*).

Dist.—19 T. L. J., 1086.

**40.** In view of the fact that the plaintiff claims under an agreement from the defendant's co-owners or partners, it is better they should be added as parties in order that any decree that may be passed may bind them.— **30 T. L. R.**, *116* (=**4 T. L. J.**, *342*).

**41.** Every junior member in a Marumakkathayam Tarwad is not an essential party to a suit for the removal of the Karanavan of the Tarwad.— **30 T. L. R.**, *251*.

**42.** In cases where it is thought that the Sirkar should be made a party, the Munsiffs' Courts should implead the Sirkar as a party, and then return the plaint for presentation to the proper Court. Mere direction to implead the Sirkar as a party would not justify the return of a plaint.— **5 T. L. J.**, *351*.

**43.** Plaintiff, alleging that the plaint property formed part of a garden registered as Puduval in his name, but that the Pattah therefor had been erroneously given to the defendant, sued for declaration of his title over the plaint property and for setting aside the Pattah granted to the defendant. The defendant contended that the plaint property formed part of a garden registered in his (defendant's) own name and that the Pattah was not liable to be set aside. The Court of first instance decreed the suit. On appeal by the defendant, the District Judge, holding that the Sirkar was a necessary party to the suit, set aside the Munsiff's decree and remanded the suit under Section 533, C. P. C. for impleading the Sirkar.

*Held.*—Though the Sirkar might have been made a party so as to bind it by a decree and prevent future litigation, it was not a necessary party to the suit.

In the case, there had been two registries one in the name of either party.— **31 T. L. R.**, *9*.

Ref.—32 T. L. R., 16.

**44.** Plaintiff, a sub-partner, brought the suit after dissolution of the major partnership asking that accounts of the major partnership should be taken and the amount due to the partner, whose sub-partner the plaintiff was, should be ascertained.

*Held.*—The members of the major partnership were necessary parties to the suit.— **32 T. L. R.**, *211* (=**7 T. L. J.**, *32*).

**45.** If the plaintiff merely sues for arrears of maintenance, the suit, though one for maintenance, does not differ in character from an ordinary suit to recover debt, and all members of the plaintiffs' Tarwad are not necessary or even proper parties to such a suit.

If, on the other hand, the prayer in the suit is to create a perpetual charge of maintenance on the Tarwad properties at a specified rate, other members who are equally interested in having their own interests as well as the interests of the Tarwad safeguarded, have the right to contest the claim and see that a fair and equitable arrangement is come to.— **8 T. L. J.**, *312*.

Fol.—40 T. L. R., 11 (=14 T. L. J., 90).
16 T. L. J., 545.
Ref.—14 T. L. J., 464.

**46.** It is competent to a Court, at any stage of the proceedings, either upon or without the application of a party, to order that the name of a party improperly joined be struck out.

The fundamental principle underlying the rule relating to the joinder of parties is

"that all concerned in the demand ought to be made parties in equity. Not all concerned in the subject-matter, respecting which a thing is demanded, but all concerned in the very thing which is demanded, in the matter petitioned for, in the prayer of the bill, or in other words, in the object of the suit."

*Per Raman Tampi, J.*—The word "may" used in the first sentence of Section 28 ought to be interpreted with reference to the context and "the particular provisions or the general scope and objects of the enactment conferring the power." In the absence of any provision depriving the Courts of the power to act *suo moto* in the matter of striking out the name of any party to the suit, I am clear that such power may be validly exercised. * * Section 28 contains an enabling provision which may be availed of by the parties at certain stages of the suit, but which may be given effect to by the Court at any time consistently with equitable and just considerations. * Though the Court acted in the case on the motion of the plaintiff, its order may be upheld as one made in the exercise of its own inherent jurisdiction.—

11 T. L. J., *278*.

**47.** It is clear law that where there are several trustees all of them should be impleaded in suits relating to the trust.—

13 T. L J., *486*.

**48.** In a suit for declaration of right to future maintenance and recovery of arrears of maintenance brought by junior members of a Nayar Tarwad, all the adult members of the Tarwad should be impleaded as parties. Section 25 of the Nayar Regulation does not militate against this rule as it was enacted in order to protect strangers seeking relief against the Tarwad and to safeguard the interests of the Tarwad as a whole.

So long as a Nayar Tarwad remains impartible and joint the main right of each individual member thereof is the claim to share in the profits of the Tarwad property by demanding separate maintenance. A fair equitable adjustment of this right is impossible or at least practically difficult unless the adult members of the Tarwad are given an opportunity of contesting the claim.— 40 T. L. R., *11*

(= 14 T. L. J., *90*).

Fol.—14 T. L. J., 310.

16 T. L. J., 545.

**49.** In cases where the plaintiff seeks for a declaration of his right to get and the grant to him of a specific amount as future maintenance as against the Tarwad, all the adult members of the Tarwad should be made parties.

The right of every member of a Tarwad to be maintained out of the Tarwad properties is an individual right, and a fair and equitable adjustment of this right is impossible, or, at least, practically difficult, unless the adult members of the Tarwad are given an opportunity of contesting the claim for declaration put forward in the suit.

The above view does not go against the provisions of Section 25 of the Nayar Regulation (of 1088). The words "no decree shall bind a Tarwad unless it be obtained in a suit against the Karanavan *as such*, etc." occurring in Section 25 would appear to indicate that the provisions therein were meant to apply only to those suits which could be brought against the Karanavan of a Tarwad not only *as such*, but otherwise also, *i. e.*, independent of and without reference to his position as Karanavan, and were not intended to govern those suits *which cannot be brought against a Karanavan except as such or which could be brought against him only as such*. A suit by a junior member for a declaration in respect of future separate maintenance falls within the latter description of suits italicised.— 14 T. L. J., *310*.

Fol.—16 T. L. J., 545.

Ref.—19 T. L. J., 195.

50. The suit was for recovery of arrears of rent in respect of a land leased to the defendant by the plaintiff under a lease deed. The defence was that the land was leased by the plaintiff and another co-sharer and that the plaintiff's share of the rent was paid to the plaintiff and the co-sharer's portion of the rent to him. Both the lower Courts decreed the plaintiff's suit. In special appeal, the defendant contended that the person referred to as the plaintiff's co-sharer should have been impleaded as a party to the suit and the defendant allowed to prove that his share of the rent was paid to him.

*Held.*—A lessee cannot be allowed to set up the title of an alleged co-sharer of the lessor, as to do so would be to defeat the fundamental principles of estoppel as enacted in Section 116 of the evidence Act.

A person taking a lease from one of several co-sharers cannot dispute his lessor's exclusive title to receive the rent or sue in ejectment. The person referred to by the defendant as the plaintiff's co-sharer is not a necessary party to the suit.—

**14 T. L. J.,** *393.*

51. The original plaintiff having died, his daughters were impleaded as his legal representatives. On a subsequent date, the defendants petitioned that these petitioners (the daughters) had been wrongly brought on record. The Court, holding that the suit had abated on the death of the original plaintiff, directed the removal of the petitioners from the array of parties.

*Held.*—The order directing the abatement of the suit was virtually a decree and was therefore appealable as such. The order, in so far as it directed the removal of the petitioners from the array of parties fell within Section 28, C. P. C., and was appealable. The revision petition was therefore incompetent.— **15 T. L. J.,** *226.*

52. It is true that Section 28 gives the Court very wide discretion to add parties at any stage of the proceedings. The term "questions involved in the suit" in Section 28 does not include any claim which can possibly be put forward by any body to the property involved in the suit. The words imply that the defendant to be added must be a defendant against whom the plaintiff has some cause of complaint which ought to be determined in the action and it was never intended to apply where the person to be added as a defendant is a person against whom the plaintiff has no claim and does not wish to prosecute any.

The mere fact that a preliminary decree had been passed does not by itself prevent the Court, from exercising its jurisdiction to add parties, under the second paragraph of Section 28, but such parties should not be added unless it is necessary in order to enable the Court to adjudicate on all the questions involved in the suit which words do not mean all the questions relating to the property involved in the suit.—

**42 T. L. R.,** *343.*

53. The plaintiff claiming to be the direct Seshakaran of the deceased Karanavan of a Tarwad and on the strength of an Udampadi executed in his favour by the deceased Karanavan sued for the recovery of the amount due under a promissory note executed by the defendant in favour of the deceased Karanavan. The defendant contended *inter alia* that as the amount under the note was advanced out of the Tarwad funds, the Karanavan of the Tarwad at the time of suit was a necessary party.

*Held.*—(1) The addition of the Karanavan of the Tarwad and the senior Anandaravars of the various branches, if any, as party defendants in the suit, was essential for effectually and completely adjudicating upon all the questions relating to the reliefs claimed in the plaint.

(2) The omission to press the objection against non-joinder specifically raised in the written statement could not amount to a waiver of the objection. Even if the objection on the ground of non-joinder had not been specifically taken by the defendant, the

statutory provision (Section 28) clearly empowers the Court to remedy this defect, if in the peculiar nature of the case the same is considered necessary.

The power conferred by the statute is discretionary, but is widely exercised even though the addition of new parties may add new issues. But if the plaintiff objects and serious embarrassment or inconvenience will be caused to him, the addition should not be effected. On the one hand, the Courts have to bear in mind that the plaintiff as the *dominus litus* should have his discretion untrammelled to decide, whom all he should fight with, to obtain the reliefs he claimed and that the 'questions involved in the suit' contemplated in the statutory provision refer only to those with regard to the right set up and relief claimed on the one side and denied or withheld on the other. The necessity of avoiding a multiplicity of suits and preventing the defendant from being harrassed by other suits for the identical relief claimed in the suit should not also be ignored.— **43 T. L. R.**, *434.*

**54.** It has been consistently held that, in suits for the enforcement of the rights under purchases, either at a private sale or a Court sale of Chitty dues, from a prized subscriber, all the unprized subscribers are necessary parties as they have a lien over the Chitty assets. The Chitties Regulation has not altered the law on this matter, as the legal rights and liabilities springing up from the relationship of the foreman and the prized and unprized subscribers in the Chitty concern, contained in the Regulation are substantially the same as those formulated in the precedents of the High Court before the Regulation was enacted. Under Section 28, C. P. C., a distinction is sometimes drawn between 'necessary' parties and 'proper' parties so far as actions are concerned. 'Necessary' parties are those without whom no decree at all can be rendered, while 'proper' parties are said to be those whose presence renders the decree more effectual, *i. e.*, those by whose presence the decree becomes a complete determination of all the questions which can arise and of all the rights which are connected with the subject-matter of the controversy.

In the matter of applications by intervenors, the Courts have to scrutinise the allegations regarding the necessity of impleading the parties concerned, and if the application in question is opposed, they should unhesitatingly reject the same, unless they are satisfied that having regard to the cause of action alleged, and the relief claimed, there could not be a properly constituted suit without them on record. It will also have to be borne in mind in this connection that the plaintiff being generally the *dominus litus*, he should not be compelled to fight against some other litigant not of his own choice, and whose presence on record, is not required by a positive rule of law, or seek for a determination of questions which would not arise in the nature of the right set up and the reliefs claimed by him.
**18 T. L. J.**, *671.*

**55.** As regards the parties who have to be on record in suit based on mortgages, the Courts have to be governed by the general provisions relating to joinder of parties contained in the Civil Procedure Code, the Court having the power to implead such persons whose presence on record is in its opinion necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit (Order I, Rule 10). A mortgage suit should be complete by itself, so as to ensure a final adjudication of all the questions involved and have the same settled once for all, with a view to avoid multiplicity of suits.

All persons having an interest either in the mortgage security or in the right of redemption are required to be joined, as parties to suits relating to mortgages. Puisne mortgages could sue for foreclosure or sale without the prior mortgagee on record, and the prior mortgagees need not be impleaded by them in suits for redemption of subsequent mortgages.

In actions by prior mortgagees to enforce their mortgages, the subsequent encumbrancers are necessary parties as they are persons interested in the equity of redemption. The latter cannot be concluded by proceedings taken behind their back. Two fundamental principles should be borne in mind in determining who all should be parties to actions of this kind; firstly, the mortgagee must be deemed to seek for the sale of the mortgagor's interest in the property as it stood on the date of the mortgage, and secondly, where there are more mortgagees than one, the holder of the last one has the right to redeem the earlier mortgages. In this view, the subsequent encumbrancers are clearly interested in the issue of the suit and therefore have to be brought in as parties, if an effective and final adjudication is required. A decree obtained by a prior mortgagee without the puisne encumbrancers on record will not *per se* be void and unenforceable against the parties thereto.

It is a well recognised rule of law that decrees and orders and the proceedings held with reference to, or in pursuance of, the same can bind only the parties thereto. This rule is clearly applicable to actions in enforcement of mortgages as well. If puisne encumbrancers are left out in such decrees their rights will remain unaffected. The subsequent encumbrancer cannot by any stretch of argument be said to have been represented by the mortgagor in the prior suit so as to constitute such a privity of estate between them as to make the decree valid and binding upon the former (F. B.).

**44 T. L. R.,** *275*
(=**18 T. L. J.,** *736*).

**56.** The suit was by certain junior members of a Marumakkathayam Tarwad for maintenance out of the Tarwad properties. They had impleaded all persons who, according to them, were the adult members of the Tarwad. The 8th defendant, the Karanavan, also conceded that the plaintiffs and defendants were the only members of the Tarwad. The petitioners came forward as members of another Thavazhi of the Tarwad and prayed to be impleaded. Both the plaintiffs and the defendants denied their status and protested against their intervention in the suit. The lower Court refused the petition of the intervenors.

*Held* (in revision).—The petitioners were not necessary parties to the suit. Their introduction into the suit would virtually change the nature of the suit and necessitate the decision of complicated questions outside the case of both the plaintiffs and the defendants, which neither of them wanted to be raised. It was good to avoid multiplicity of suits, but it would be futile to expect to shut out all future litigation. All that should be attempted was to avoid further litigation regarding the matters involved in the suit—that was to say, matters which were in dispute between the plaintiffs and the defendants. "To bring persons on to the record whose interests are not identical with either plaintiff or defendant, necessarily complicates the proceedings and greatly impedes the progress of the suit. This disadvantage very frequently outweighs the advantages arising from finality of litigation, which is upon the whole the best justification for bringing in fresh parties.— **19 T. L. J.,** *195.*

**57.** In a mortgage suit, the title of a third party paramount to that of the mortgagor and mortgagee cannot be enquired into, and such third party cannot be added as a party to the suit. It does not matter who raises the paramount title and who puts forward the objection.—

**19 T. L. J.,** *1086.*

**58.** See also—

Sec. 78.—**1 T. L. J.,** *203.*
„ 85.—**26 T. L. R.,** *83*
(=**1 T. L. J.,** *284*).
Or. 1, r. 1.—**10 T. L. J.,** *338.*
„ r. 3.—**3 T. L. R.,** *16.*
**K. P.,** *584.*
**11 T. L. J.,** *87.*
**19 T. L. J.,** *153.*
„ r. 13.—**32 T. L. R.,** *16*
**43 T. L. R.,** *434.*
„ XXII, r. 4.—**15 T. L. J.,** *371.*

Conduct of suit.

**11.** The Court may give the conduct of the suit to such person as it deems proper.

Appearance of one of several plaintiffs or defendants for others.

**12.** (1) Where there are more plaintiffs than one, any one or more of them may be authorised by any other of them to appear, plead or act for such other in any proceeding; and in like manner, where there are more defendants than one, any one or more of them may be authorised by any other of them to appear, plead or act for such other in any proceeding.

(2) The authority shall be in writing signed by the party giving it and attested by two witnesses and shall be filed in Court.

(3) It shall be lawful for the Court in any particular case to require the party who is alleged to have executed the authority above mentioned to appear before it and admit the execution of the authority or to issue a commission to ascertain whether such authority is genuine. The cost of issuing the commission shall be paid by the party who produces the authority. If the alleged executing party fails to appear before the Court, or the cost of issuing the commission be not deposited within the time fixed, the Court may refuse to act on such authority.

---

**Case Law.**

*(Sec. 29.)*

Section 29 of the Civil Procedure Code says imperatively that "unless the Court directs otherwise," "the plaint shall be amended in such manner as may be necessary" when a defendant is added. However, this is not a fatal objection [Section 547, C. P. C. (new Section 78)]. The plaint ought to be amended by addition or substitution of appropriate reliefs, when defendants are added.— **22 T. L. R.**, *200.*

**Order I, r. 11** [= S. 28, last Para = *Or. I, r. 11* = En. Or. 16, r. 39]

**1.** In the corresponding last para of Section 28 of the old Regulation, the word "plaintiff" occurs in place of the word "person."

**2.** For Rule 39 of the English Rules, see under previous Rule.

**Or. I, r. 12** [= S. 31 = *Or. I, r. 12*]

1. This Rule reproduces Section 31 of the old Regulation.

*Sub-Rule (1)* is the same as in the British Indian Code.

*Sub-Rule (2)*.—The words "and attested by two witnesses" do not occur in that Code.

*Sub-Rule (3)*.—This is not found in that Code.

II. Sub-Rule (3) and the words in Sub-Rule (2) above mentioned were inserted in Regulation II of 1065, by the amending Regulation II of 1070. The Select Committee who made the additions observed:—

Objections as to non-joinder or mis-joinder.

**13.** All objections on the ground of non-joinder or mis-joinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

---

"Section 3 of the amended Bill is new. It clearly defines the procedure to be adopted in the case of a Power-of-Attorney produced by one of the parties, in the event of the Court entertaining any doubt as to its authenticity. The responsibility and liability of the party not appearing before the Court and the validity of the decree passed against him depend upon the genuineness of the authority. Even under the law, as it now stands, the Court may exercise the power which, by the new Section, we propose to confer on them. But the advantage of a clear provision on the point, which will remove all causes of doubt, has induced us to enact this Section."

**Case Law.**

**1.** (1) Though Section 104 of the Civil Procedure Code (old) allows one or more plaintiffs to appear and act for the other or others of them, the presentation of an appeal by one or more of several appellants for the other or others of them is wholly unsanctioned by law. An appeal must be filed in person or by Vakil or by a recognized agent under the provisions of the Code.

(2) An appeal filed by the party improperly added as such and who has not signed the plaint, is bad for defect of parties.

Section 104 of Regulation II of 1087 was as follows:—["When there are two or more plaintiffs any one or more of them may be authorized to appear, plead and act for the other or others of them; and in like manner, when there are two or more defendants, any one or more of them may be authorized to appear, plead and act for the other or others of them: provided that the authority shall in all cases be in writing, and shall be filed in the Court; when so filed, it shall be as effectual to all intents and purposes as if the person so authorized to appear, plead and act, were a pleader of the Court."].— **7 T. L. R.**, *185*.

**2.** The authority under Section 31, C. P. C., must be in writing signed by the party giving it, attested by two witnesses, and must be filed in Court. The Section read as a whole clearly shows that such authorisation must be effected before the act is done by the person authorised.—

**13 T. L. J.**, *273*.

---

**Or. I, r. 13** [= S. 30 = *Or. I, r. 13*]

I. Section 30 of the old Regulation was as follows:—

"30. *Time for taking objections as to non-joinder or mis-joinder.*—All objections for want of parties, or for joinder of parties who have no interest in the suit, or for mis-joinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases, before the first hearing, and any such objection not so taken shall be deemed to have been waived by the defendant."

II. In the Statement of Objects and Reasons for the 1901 amending Bill, it was observed:—" An exception should be made of cases in which the ground of objection arises subsequently, as, for example, where, after the first hearing and before decree, a co-parcener, remainderman or reversioner is born, or a female party is married to a stranger to the suit."— *India Gazette dated 21-12-1901, Pt. V.*

### Case Law.

1. As a rule, all formal objections to a suit such as mis-joinder, &c., ought to be taken before the settlement of issues as they are capable of amendment. No effect should be given to the plea of mis-joinder as it was not taken in the Court below. The assignor being liable to account to the assignee, on the failure of the claim founded upon the assignment, his inclusion as co-defendant is not bad for mis-joinder. The modern tendency of decisions and legislation is to discourage pleas of mis-joinder.—

**3 T. L. R.,** ***16.***

**2.** The suit was by junior members of a Marumakkathayam Tarwad to remove defendant from his office of Karanavan. There were other junior members who had not been impleaded. On this ground, the case was remanded by the Judge. In appeal, it was contended for the defendant that all members of the Tarwad are essential parties to a suit for removal of Karanavan and that the suit could not go on in the absence of any of the members, and that Section 30 which deals with waiver of an objection as to mis-joinder or non-joinder of parties does not apply to the case of parties so essentially necessary to the suit that it cannot be maintained without them.

As to the argument founded on the alleged inapplicability of Section 30, it means that where by the substantive law the right of suit resides in a certain person or in certain persons jointly, another person or a few of those persons alone cannot maintain the suit. Though generally, objections as to mis-joinder or non-joinder in all such cases may not be within Section 30, it may be pointed out that even in some such cases, as in the case of joint promisors, joint promisees and trustees, objections as to non-joinder have been held to be waived because they were not raised at the earliest possible opportunity. The rule of procedure does nothing more than provide that certain rules of substantive law can only be enforced or given effect to in a particular way or under particular limitations.

*Obiter.*—It is a safe maxim for a Court of appeal to be governed by that an objection which, if taken, might have been cured and which has not been taken in the Court below, shall not be taken in the Court of appeal.—

**30 T. L. R.,** ***251.***

3. In a suit for redemption of a mortgage, the defendants Nos. 2 and 3, were made parties on the ground that they have trespassed into a portion of the mortgaged premises during the currency of the mortgage. These defendants denied the trespass and contended that the plaint lands belonged to the Sirkar as unregistered waste. The first defendant-mortgagee admitted the mortgage. The Munsiff allowed the suit. On appeal, it was contended for the first time by the defendants Nos. 2 and 3 that the Sirkar was a necessary party. The District Judge accepting this contention, reversed the Munsiff's decree and remanded the suit with directions to make the Sirkar a party to the suit.

*Held.*—(1) As the defendants Nos. 2 and 3 had not obtained any title to the land from the Sirkar, the latter was not a necessary party.

(2) The objection for want of parties not having been taken by the defendants 2 and 3 before the first hearing should be deemed to have been waived by them. No doubt, under Section 28, C. P. C., [ Or. I, r. 10 (2) and (3) ], the Court is invested with plenary powers in the matter of adding at any time parties whose presence before it may be *necessary* in order to enable it to completely and effectually settle all the questions involved in the suit. The presence of the Sirkar as a party on the record is not necessary for the disposal of the case.—

**32 T. L. R.,** ***16.***

**4.** The plaintiff claiming to be the direct Seshakaran of a deceased Karanavan of a Tarwad and on the strength of an Udampadi executed in his favour by the deceased Karanavan sued for the recovery of the amount due under a promissory note executed by

## ORDER II.

### Frame of Suit.

Frame of suit.

1. Every suit shall, as far as practicable, be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

Suit to include the whole claim.

2. (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

Relinquishment of part of claim.

(2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

Omission to sue for one of several reliefs.

(3) A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

*Explanation.*—For the purposes of this Rule, an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

---

the defendant in favour of the deceased Karanavan. The defendant contended, *inter alia*, that as the amount under the note was advanced out of the Tarwad funds, the Karanavan of the Tarwad at the time of the suit was a necessary party.

*Held.*—The addition of the Karanavan of the Tarwad and the senior Anandaravars of the various branches, if any, as party defendants in the suit, was essential for effectually and completely adjudicating upon all the questions relating to the reliefs claimed in the plaint.

The omission to press at the time of the settlement of issues the objection against non-joinder specifically raised in the written statement could not amount to a waiver of the objection. Even if the objection on the ground of non-joinder had not been specifically taken by the defendant, Section 28 (2) [ = Or. I, r. 10 ] empowers the Court to remedy this defect, if in the peculiar nature of the case the same is considered necessary.— 43 T. L. R. 434.

Or. II, r. 1 [ = S. 88 = *Or. II, r. 1* ]

**Case Law.**

See Or. I, r. 3.—**K. P.**, *481*.

**Or. II, r. 2** [ = S. 39 = *Or. II, r. 2*]

I. **1.** The corresponding Section 39 of the old Regulation was as follows:—

"39. *Suit to include whole claim.*—Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but the plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

*Relinquishment of part of claim.*—If a plaintiff omit to sue in respect of or intentionally relinquish any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

*Omission to sue for one of several remedies.*—A person entitled to more than one remedy in respect of the same cause of action may sue for all or any of his remedies; but if he omits (except with the leave of the Court obtained before the first hearing) to sue for any of such remedies, he shall not afterwards sue for the remedy so omitted.

If a plaintiff omits to include in the plaint any portion of his claim, or to ask for any of the remedies to which he is entitled (in cases in which he is entitled to more than one remedy), the Court may, at or before the first hearing, allow him to amend the plaint so as to include the portion of the claim or the remedy so omitted.

For the purpose of this Section, an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action.

*Illustration.*

A lets a house to B at a yearly rent of rupees 1,200. The rent for the whole of the years 1881 and 1882 is due and unpaid. A sues B only for the rent due for 1882. A shall not afterwards sue B for the rent due for 1881."

**2.** In regard to the fourth para, it was observed in the Statement of Objects and Reasons:—"A new para has been added to Section 43 (Indian Code) to provide against the danger of a plaintiff losing his rights *altogether* on account of an omission which, in many cases, is the result of ignorance. It simply enables the plaintiff to amend his plaint with the permission of the Court, and in no way affects the main principle of the Section, *viz.*, that there should be no multiplicity of litigation in respect of one and the same matter."

II. The Illustration has been amplified so as to state more fully the principle formulated.

"The Illustration to the present Section, whilst embodying a most necessary rule of practice, is in direct conflict with the Section itself, and is intelligible only if the latter is construed as requiring the joinder of successive causes of action arising out of the same contract and existing at the time of the institution of the suit." (Objects and Reasons, 1901 Bill).— *India Gazette dated 21-12-1901, Pt V.*

**Case Law.**

**1.** A party is bound to bring forward his whole case in respect of a matter in litigation and open to him upon the points for decision in the suit. He cannot abstain from relying upon, nor abandon, a ground of claim, which is in question and proper for consideration and decision in the suit, and afterwards make it a fresh cause of a fresh suit in respect of the same subject-matter.— **7. T. L. R.,** *171.*

**2.** Plaintiff sued her husband (defendant) to recover the plaint land, under a registered agreement alleging that she was ill-treated by the defendant. The latter denied the ill-treatment and averred that the plaintiff could not claim the land as he was ready and willing to maintain and house her according to the terms of the agreement. The Munsiff decreed in favour of the plaintiff. The Zillah Judge, on appeal, held that the Munsiff had no jurisdiction to try the suit, as the value of the whole field (of which

the property sued for is 3/4) exceeded Rs. 500; and as ill-treatment was not proved, the suit for possession of the land was not maintainable. He accordingly dismissed the suit. On appeal:

*Held.*—Although plaintiff might have, under the terms of the agreement claimed possession of the whole field, she chose to give up her claim to 1/4 of it, and claimed only 3/4. Section 39 gave her the option of doing so. As the value of the 3/4 did not exceed Rs. 500, the suit was within the jurisdiction of the Munsiff.—

**9 T. L. R.,** *174.*

**3.** The suit was for the principal and balance of interest due under a bond, the date of payment fixed in the bond being 5-5-1072. The defendant, admitting the execution of the bond, pleaded absence of consideration, and also that plaintiff having sued defendant on 25-10-1072 for interest due on the bond up to that date, without suing for the principal he was barred from bringing the present suit for the principal, by Section 39, C. P. C.

*Held.*—The bar by Section 39 was fatal to the plaintiff's suit and it was rightly dismissed by the District Judge.

As the claims for both interest and principal arose from the same cause of action and as there was no special and distinct agreement for payment of interest as distinguishable from the principal and Section 39 of the Civil Procedure Code requires a plaintiff to include in the same suit the whole of his claim arising out of the same cause of action, the plaintiff could not be allowed to split his claims; and therefore, the second suit for the principal was not maintainable.

"One of the reasons for the prohibition is that the defendant be not put to unnecessary vexation, and one test is whether the same evidence and the same arguments apply in the two cases (9 Mad., 279).

"The real principle which runs through all the cases is that if the several items which make up the claim are of the *same nature* and form part of the same course of dealing *so as to pass under the same discription and form part of one transaction*, they must be considered as one cause of action and must be joined in one suit, though they may have arisen out of several contracts" (12 Cal., 339). In the case, at the date of the plaintiff's prior suit, both the interest and the principal became but one debt, and both formed parts of one transaction.

Where the whole cause of action has arisen for the plaintiff, he cannot be allowed to split his claims; and this rule is founded on considerations of public policy. It may be different where the two demands arise under different contracts, *e. g.*, where the covenant to pay interest is different and distinct from that to pay the principal and the right to demand the principal may not have accrued with the right to interest. There the general rule may be excluded by the special contract of the parties and the two claims may not be strictly said to arise from the same cause of action. In the case, there was no special and distinct agreement for payment of interest as distinguished from the principal.— **14 T. L. R.,** *88.*

Dist.—16 T. L. R., 91.
14 T. L. J., 51.
Appl.—41 T. L. R., 236
(=14 T. L. J., 577).
Ref.—3 S. D., 96.
18 T. L. J., 315.
Fol.—18 T. L. R., 212.
19 T. L. R., 59.

**4.** An immediate reversioner to immovable property has two rights of action. The one is to sue to have an encumbrance which is likely to injure his rights if not impeached in time, declared invalid; and the other is to sue for possession when his title accrues to hold the property. The plaintiff's prior suit was for a declaratory decree only; and he could not then sue for recovery of the property. As he could not include the present claim in the prior suit, Section 39 did not apply.— **15 T. L. R.,** *3.*

**5.** A suit for possession is not barred under Section 39 of the Civil Procedure Code on the ground that there was no prayer for possession in the prior suit for a declaration of plaintiff's title alleging that he was in possession. The plaintiff might have honestly thought that he was in possession when he brought the prior suit, and because in pursuance to the finding of the Court therein he had stated in the plaint in the subsequent suit that he was dispossessed, it is not to be inferred that he knew of the dispossession when he brought the prior suit, or that he voluntarily abandoned the right to seek possession.—

**15 T. L. R. App., *4*.**

Dist.—23 T. L. R., 248.

**6.** The principle on which Section 39 of the Civil Procedure Code proceeds is that when the whole cause of action has arisen to plaintiff, he cannot split up his claims and make any election as to suing for one portion at one time and for the other at another time.

In a hypothecation bond it was provided that the interest fixed at a certain rate for the sum borrowed thereunder should be paid annually and receipts taken and that the principal and the balance of interest, if any, should be paid in a lump sum whenever the hypothecatee needed the same. The hypothecatee sued first for the interest which accrued up to a certain date, stating in his plaint that he reserved to himself the right to sue for the principal at a subsequent date, and brought another suit for the principal and balance of interest. It was contended that the second suit was barred by Section 39, as at the prior suit the plaintiff had a complete cause of action for the principal and interest:

*Held.*—The principle on which Section 39 proceeds is that where the whole cause of action has arisen to plaintiff, he cannot split up his claims and make any election as to suing for a portion at one time and for the other at another time. In a suit like the present, where there was a distinct agreement in the bond for payment of interest as distinguished from the principal and consequently the causes of action for principal and interest were practically distinct, Section 39 could not operate as a bar.—

**16 T. L. R., *91*.**

Dist.—19 T. L. R., 59.
41 T. L. R., 236
(=14 T. L. J., 577).
Fol.—14 T. L. J., 51.
Ref.—18 T. L. J., 315.
Affirmed.—18 T. L. J., 894.

**7.** A Jenmi sued his tenant for Adiyanthram fees and obtained a decree; but as he then failed to claim the renewal fees which were at that time due under the same Kanom document, he brought a subsequent suit for the same.

*Held.*—As both the fees were customary fees which sprang from the same Kanom letting and formed remedies in respect of the same cause of action, a subsequent suit by the Jenmi for the renewal fees due at the time of the prior suit was barred by Section 39.

A cause of action is defined to be the right and the infringement of that right. That in the case will depend upon the question whether Adiyanthram fees will form a separate contract from the agreement to pay renewal fees. They both spring from the original Kanom and are inseparable rights. It is evident from the Jenmi and Kudiyan Regulation that Adiyanthram fees falls under the head of customary dues which are incidents to a Kanom. Whether the right to sue be for renewal fees or for Adiyanthram fees, they both spring from the letting, and the cause of action is the same. **19 T. L. R., *59*.**

**8.** The Karanavan of a Malabar Tarwad sued certain junior members for a declaration of his right to the properties in their possession, for cancellation of certain alienations made in respect of some of them

and for recovery of the same and it was decided that a declaration should be granted to the plaintiff and that the rest of the suit should be dismissed without prejudice to the plaintiff's right to recover the property in respect of which declaration was granted in the event of the Karanavan making suitable provision for the maintenance of the defendants—juniors. The Karanavan subsequently sued the defendants for recovery of possession of the properties and some other properties not included in the prior suit. It was contended that, so far as the latter properties were concerned, the suit was barred under Section 39.

*Held.*—The defendants' contention was right as the cause of action in the two suits was the same. The true test in such cases is whether the claim in the new suit was in fact founded on a cause of action distinct from that which was the foundation in the former suit (F. B.).— **21 T. L. R.,** *159.*

9. In a suit by some of the junior members of a Malabar Tarwad for cancellation of a sale deed and recovery of possession of Tarwad property which had been improperly conveyed away by a Karanavan in favour of his son, a decree was passed setting aside the sale, the prayer for recovery of possession having been refused in pursuance of the law prevailing at the time. In a subsequent suit for recovery of possession of the property by a succeeding Karanavan of the Tarwad who was not a party to the prior case :

*Held* (by the majority of the Full Bench, *Govinda Pillai, J.* dissenting).—Under Article 121 of the Limitation Regulation, the cause of action arose from the date of the decree cancelling the sale.

*Per Govinda Pillai, J.*—Adverse possession as against the Tarwad having commenced from the date of the sale, a decree in a suit merely declaring title cannot disturb the adverse possession which had begun before its institution or check the statutory bar of limitation. The mere pendency of a suit does not place the property sued for in the possession of the Court so as to check limitation bar.

*Per Sadasiva Iyer, C. J.*—A declaratory decree, which establishes that a vendee who has got the ***juridical possessio naturalis*** has no right or title to the possession and that such rights are vested in the vendor, quashes all the legal effects of the juridical possession of the vendee till that date and makes him on the date of the decree a mere detainer of the disputed property, his detention till then being of no effect as against his opponent's right on that date, the civil possession of the property as against the vendee having been established.

If a particular relief out of several reliefs arising from the original cause of action could have been given in the former suit on that cause of action and was so given the remedy is only by execution. But if it could not have been so given in the state of the law as it prevailed at the time of the first suit, there is nothing to prevent a fresh suit for that relief based on the rights as declared by the matter of record.

*Per Padmanabha Iyer, J.*—The decree in the prior case (refusing to give possession of the disputed property) having been passed only against some of the junior members of the Tarwad, does not operate as ***res judicata*** against the other members who have joined in the institution of the subsequent suit.

The previous possession of the vendee which was adverse to the Tarwad became superseded by the decree declaring the title of the Tarwad. As a complete record and title deed of the highest kind for the Tarwad, the decree must be given the same legal consequences as an admission of title by the vendee himself.— **22 T. L. R.,** *157.*

Fol.—26 T. L. R., 148.
42 T. L. R., 200
(=15 T. L. J., 391).
Ref.—22 T. L. R., 183.
24 T. L R., 102.
25 T. L. R., 123.
28 T. L. R , 51.
Dist.—8 T. L. J., 386.

**10.** A leased his lands to B for a term of six months and put B in possession. On the date of the lease, A also entered into an agreement with B to sell the lands to him on his paying a certain sum of money before the expiry of the lease and providing for a right of re-entry in case of failure to pay the same within the time fixed. B having defaulted to pay, A sold his lands and his rights as lessor to C. C sued B for rent for the six months' period and for mesne profits and damages for subsequent wrongful occupation. Subsequently C brought a fresh suit against B for possession, mesne profits and damages for waste. B resisted the claim on the strength of the agreement for sale and urged that the separate suit for possession was barred by Sections 39 and 40, C. P. C.

*Held.*—(1) As the wrongful detention of property was the cause of action to support the claim for possession as well as the claim for mesne profits, a suit for one of the two claims to the exclusion of the other barred a second suit for the omitted relief.

The bar under Section 39 was one provided by law on the grounds of public policy to discourage piecemeal litigation by litigious individuals.

Notwithstanding that on a technical ground, plaintiff is punished with future inability to sue for possession on account of his having omitted to sue for possession in the former suit, his title persists and it might support further suits for mesne profits for continued detention of the lands by defendant from him.

(2) Executory contracts to convey lands gave no title to the lands, but only a claim *in personam* against the person who agreed to convey.

(3) When a suit for possession of the property would not lie, no legal injury could be said to arise from waste to the trees or the property so as to form the basis for the award of damages for such waste, though a claim for damages for past wrongful detention of the land could be allowed as the title subsists (F. B.).— **23 T. L. R.,** *248.*

Dist.—1 T. L. J., 278,
23 T. L. R., 51
(= 2 T. L. J., 473).
Appl.—8 T. L. J., 386.

**11.** A transferred his right under a document to B and C each of the latter being given a distinct half share. B filed a suit for his one-half share and the suit was compromised. Subsequently C filed a suit for his one-half share. It was contended that Section 39 C. P. C., was a bar to the suit.

*Held.*—Section 39 C. P. C., did not apply, as the plaintiff in the prior suit was different from the plaintiff in the present suit, and each had clear and specific rights.— **1 S. D.,** *135.*

**12.** In execution of a mortgage-decree, A, the decree-holder, purchased the properties mortgaged, but delivery of possession was successfully resisted by the co-heirs of the mortgagor under a partition decree obtained after the mortgagee. A brought a suit for possession of some of the properties under the mortgage deed, on the ground that the mortgage was binding on the properties, and was allowed a lien on those properties proportionate to their value. A brought a second suit for a similar proportionate lien on the other mortgaged properties, which he omitted to include in the prior suit.

*Held.*—The suit was barred by Section 39, C. P. C.

If an owner of immovable property has a mortgage lien on which he means to rely, he is bound to make such lien also a ground of attack in his suit, and, if he fails to do so, a second suit based on it will be barred under Explanation II of Section 9 [new Explanation IV, Section 10] which involves the same principle as Section 39.

The omission of an alternative relief which the plaintiff not only might but ought to have claimed in the prior suit bars a

second suit to enforce the same. It comes under the head of "claim," inasmuch as it was one which, if made, the Court had no discretion to refuse.— **2 S. D.**, *157.*

**13.** A Jenmi's claim for renewal fees as well as that for arrears of Michavarom and Aravakasom in respect of the same Kanom demise are reliefs arising from one and the same cause of action and a subsequent suit for one of the reliefs will be barred if a prior suit had been brought for the other without including it.

Where two suits for reliefs arising out of the same cause of action are filed simultaneously, only one of them can be dismissed under Section 39. To dismiss both the suits of plaintiff on account of bar under Section 39 will be inequitable.— **3 S. D.**, *107.*

**14.** The plaintiff, the owner of a moiety of a mortgaged property, first sued to set aside a sale of the entire property, including plaintiff's share, executed to the mortgagee by the owner of the remaining moiety. The suit ended favourably to the plaintiff. The plaintiff brought the present suit to redeem his moiety. On the contention, *inter alia*, that the suit was barred by Section 39, as the plaintiff should have included the prayer for redemption in the prior suit:

*Held.*—Section 39 did not apply, and the suit was not barred.

The whole question turns upon what was really the foundation for the cause of action. The test appears to be whether the infringement of a right which gave a cause of action in a former suit forms the basis of the action brought in a second suit; in other words, should the relief claimed in the second suit really form part and parcel of the cause of action in the former suit.

In the case, the cause of action was distinct. In the former suit, the plaintiff sought to set aside a sale, on the ground that his co-mortgagor had no right to sell what did not belong to him, namely, plaintiff's half-share in the property. The plaintiff merely wished to remove the cloud upon his title, and he succeeded. He was content to let the property remain as it was, and even though the mortgagee in possession was acting in defiance and therefore adversely to his interest, he cannot be compelled to sue before his own time: besides it is open to question, whether he would not have offended the provisions of Section 40 (Order II, Rule 4) for mis-joinder of causes of action, had he attempted to do so.— **1 T. L. J.**, *278.*

**15.** Plaintiff leased the plaint property orally to defendant for an annual rent of Rs. 90. In a suit for arrears of rent a decree was given for plaintiff in spite of defendant's denial of the lease. A second suit by plaintiff for subsequent arrears of rent was also decreed. The present suit was for arrears of rent and for recovery of possession of the property leased. The defendant contended that inasmuch as he denied the lease in the first suit, his subsequent possession of property became wrongful and that the plaintiff should have included the claim for the recovery of the property in the second suit. The District Judge gave a decree for rent but disallowed the prayer as to recovery of possession of the property.

*Held.*—The decision in the first suit must be given the same effect as an admission of plaintiff's title by the recalcitrant lessee, and must be treated as in effect restoring the parties to their original position as land-lord and tenant. As there was no open denial of the land-lord's title thereafter, the possession of the defendant was not wrongful on the date of the second suit.

As the defendant's possession was not wrongful, plaintiff was not bound in the second suit to ask for the recovery of the property also. The plaintiff was therefore entitled to claim the property in the present suit which was not barred by Section 39.— **28 T. L. R.**, *51*
(**=2 T. L. J.**, *473*).

Ref.—8 T. L. J., 886.

16. The plaintiff who had taken two half tickets in defendant's chitty, alleging that the one was prized and the other unprized, sued for the prize amount in regard to the prized half-ticket. The Court of first instance found on 16-11-1034 that the Chitty scheme collapsed in 1032, and that both the half-tickets were unprized and gave plaintiff a decree for the amount he had actually paid for both the tickets up to the date of the collapse. On appeal, the decree was substantially confirmed on 4-3-1036. On second appeal, the High Court held that the suit having been only in respect of a half and not in respect of the full ticket, the decree of the lower Court awarding the amount subscribed for the full ticket was untenable, and accordingly set it aside on 15-4-1037, so far as the second half of the ticket was concerned. Thereupon, the plaintiff instituted a suit on 29-4-1037 for recovery of his paid-up subscriptions for his second half-ticket. The defendant's contentions were that the Chitty having collapsed in 1032, the suit filed in 1037 was barred by limitation and that the plaintiff not having sued formerly for the return of his subscriptions for the second half-ticket as well, he was barred subsequently from doing so under Section 39 of the Civil Procedure Code.

*Held.*—The objection based on Section 39 of the Procedure Code was untenable. The basis of plaintiff's former suit was his allegation that he had prized the first half-ticket; his present suit was in respect of the unprized other half-ticket. The causes of action for the two suits were distinct. Hence there was no bar interposed by Section 39.— **31 T. L. R.,** *80* (= **5 T. L. J.,** *255*).

17. A bond fixing a specified time for payment, however, provided that on failure by the obligee to pay interest on a certain date the obligee was entitled to claim the amount of the principal debt also. Default was made in the payment of interest on the due date. After some time, the obligee brought a suit for recovery of the arrears of interest alone and got a decree. In a subsequent suit for recovery of the principal debt, it was contended for the defendant (obligor) that the suit was barred under Section 39, C. P. C., as the claim for recovery of the principal debt arose out of the same cause of action as that for recovery of interest and plaintiff ought to have included the former claim in his first suit for interest.

*Held.*—The suit was not barred under the provisions of Section 39, C. P. C.

Even on the assumption that the plaintiff had the option to claim both the principal and interest on the date of the former suit, he had the option to waive the larger alternative right to demand the principal and to elect to abide by the primary terms of the document: and it was clear from the plaint in the former suit that plaintiff had as a matter of fact waived his right to enforce the alternative claim.— **6 T. L. J.,** *283*.

Ref.—18 T. L. J., 315.

18. The suit was by a Samooham, as owner of the plaint property, to recover possession thereof from the defendants. The defendants contended that the suit was barred under the provisions of Section 39, C. P. C., inasmuch as such a relief was not claimed in a prior suit brought by the Samooham to cancel a sale executed for the plaint properties by a former "Kizhi" of the Samooham in favour of the defendants. It was proved that the Samooham knew when the first suit was brought that possession had passed to the vendee and yet refrained from seeking recovery of possession, and that the first suit ended in a decree in favour of the Samooham cancelling the sale.

*Held.*—Accepting the defence contention, the suit was barred under the provisions of Section 39 of the C. P. C.

The provisions of Section 39 clearly illustrate the policy of the Legislature to prevent parties being harrassed by multiplicity of suits and lay down that, if a portion of the claim in respect of the cause of action

is not included in the first suit, or if all the remedies in respect of the same cause of action are not sued for in the first suit, and the leave of the Court before the first hearing is not obtained for reserving the seeking of such remedies for the future, no fresh suit for the omitted portion of the claim or for the remedies not sued for would lie. Having regard to the unambiguous language in Section 39, the question for decision should be answered against the special appellant, for the cause of action on which the prior suit was brought was the improper act of the 'Kizhi' in executing the sale impeached in that case and putting the vendee in, or allowing the vendee to take, possession of the plaint properties. There could be no doubt that the Samooham which claimed the setting aside of the sale in that suit was entitled to seek in the same suit the remedy by way of recovery of possession, for both of these remedies were in respect of the same cause of action.—

**8 T. L. J.,** *386.*

**19.** Provision was made in a Purakkadom that the money due thereunder would be paid along with the amount due under a prior hypothecation bond. The question arose whether a subsequent suit on the Purakkadom was barred by a prior decree obtained on the hypothecation bond.

*Held.*—The causes of action in the two suits are different and the prior suit on the hypothecation bond does not operate as a bar to the subsequent suit on the Purakkadom.— **8 T. L. J.,** *493.*

**20.** The suit was instituted for principal due under a hypothecation bond and for arrears of interest. In 1087, the plaintiff had filed O. S. 19 for interest which accrued due for 3 years after the bond. It was contended that the present suit was barred under Section 39 C. P. C. by the suit of 1087, as the cause of action for the recovery of the principal had also arisen at the time of the latter suit.

*Held.*—It was not so barred, as the causes of action for the interest and the principal under A were distinct. The word 'the' in the phrase 'the cause of action' in the first clause of Section 39, C. P. C., indicates that the Section only applies to cases where the whole of the claim is comprised in the same *cause of action* and not to cases where it includes distinct causes of action as in this case.— **14 T. L. J.,** *51.*

Ref.—18 T. L. J., 815.

**21.** A hypothecation bond, executed on 6-1-1086, provided that interest at the rate of 9 per cent. per annum was to be paid in 3 annual instalments of Rs. 18 per instalment on the 20th Thulam, Kumbhom and Mithunom respectively, that the bond amount was to be discharged on 6-1-1089 and that if default was made in the payment of any one instalment of the interest, such interest was to be recoverable separately.

No interest was paid and the plaintiff filed a suit on 10-8-96 to recover the arrears of interest accrued till then, though the principal amount had also become due before that date. Interest due up to 10-8-96 was decreed to him.

The plaintiff instituted the present suit to recover the principal amount due under the hypothecation bond, and balance of interest from 10-8-1096.

The defendants raised the contention that Section 39, C. P. C. barred the present suit

as the plaintiff ought to have included the claim for the principal amount also in his former suit.

*Held.*—According to the bond, the whole of the amount due, including the arrears of interest and the principal amount, became due on 6-1-1089. The bond did not provide for payment of instalments of interest separately on 6-1-1089. Before that date, the plaintiff could have sued separately for the arrears of interest accrued due till then; but once that date was passed there was nothing in the bond to show that the interest continued to be recoverable separately thrice a year. The whole of the arrears of interest and the principal amount became due on the date fixed for the discharge of the bond.

Hence Section 39 barred the plaintiff's present suit for the principal amount due as he omitted to include this claim in the suit of 1096. "Where cause of action, which gives occasion for and forms the foundation of the suit, enables a man to ask for larger and wider relief than that to which he limits his claim, he cannot afterwards seek to recover the balance by independent proceedings."— **41 T. L. R.,** ***236***
**(=14 T. L. J.,** ***577*****).**

**22.** The plaintiff had certain claims against her brothers the defendants in the suit. The matters in dispute were referred to arbitration and an award was made. The award was that defendants should execute a mortgage of immovable properties for Rs. 800 in favour of the plaintiff. As the defendants did not comply with the terms of the award, the plaintiff applied to the Court to have the award filed under Section 504 C. P. C., [=Or. XXXIX, r. 20]. A decree was drawn up in terms of the award on 13-12-1095 and it was satisfied on 27-7-1097. Neither the award nor the decree mentioned anything about interest on Rs. 800.

The suit was brought by plaintiff to get interest at 12 per cent. on the sum of Rs. 800 from date of award to date of satisfaction of decree. The Munsiff dismissed the suit entirely. On appeal the District Judge allowed interest from date of decree to date of satisfaction, but disallowed interest from date of award to date of decree. On second appeal by the plaintiff against the decision of the District Judge in so far as it disallowed interest prior to the date of the decree, it was contended by the defendants that Section 39, C. P. C., barred such suit.

*Held.*—Section 39 was no bar to such suit. Proceedings under Section 504, C. P. C., should not be taken as suits so as to attract the provisions of Section 39.—

**43 T. L. R.,** ***157***
**(=17 T. L. J.,** ***629*****).**

**23.** The plaintiff brought the suit in 1098 to redeem the suit property on the footing of a mortgage of 1048. Though the suit was instituted after the expiration of the statutory period of fifty years from the date of the mortgage, the plaintiff claimed to be in time by reason of the first defendant's acknowledgment of the mortgage in a prior suit of 1084 for recovering arrears of Michavarom on the same property. The ground of exemption stated in the plaint was that, though the period of limitation to sue for redemption of the mortgage had expired in 1092, the plaintiff was entitled to fresh start for limitation from 30th Thulam 1084 by reason of the defendants' acknowledgment in writing on that date. The suit

was allowed by the primary Court, and its decree was confirmed in appeal with slight modification. The first defendant in second appeal against the above decree contended that the suit was not maintainable as the ground upon which exemption from limitation bar was claimed was not correctly or specifically stated in the plaint as required by the last Clause of Section 46 [=Or. VII, r. 6] and that the suit was also barred under Section 39, as the plaintiff omitted to include in the prior suit the prayer for redemption of the mortgage.

*Held.*—To determine whether a suit is barred under Section 39, Clause (1), the test is whether the cause of action in the subsequent suit is different from the cause of action in the earlier suit, and, if the answer be in the affirmative, the subsequent suit is not barred, even though it might have been open to the plaintiff to unite the two causes of action in the same suit. To ascertain if the cause of action is the same in the two suits, the Court has to look to the facts which constitute the cause of action. Where such facts are in the exclusive possession of the defendant, and he does not choose to place them before the Court, he cannot be heard on the contentions.

The object of the Legislature in requiring the ground of exemption from limitation to be stated in plaint where the suit is filed after expiry of the period of limitation, is obviously to enable the defendant to meet it in his defence and at the trial. Where the statement on the point made in the plaint was sufficiently intelligible to the defendant who has answered it in his written statement without taking any exception to its sufficiency or otherwise, the above object has been substantially achieved.

Objection based on plaintiff's failure to set out in plaint the ground of exemption from limitation or on its defect must be taken in the trial Court and it should not be allowed to be raised for the first time in the Court of final resort.—

**43 T. L. R**, *419*
(=**18 T. L. J.**, *313*).

**24.** The suit was for recovery of the principal and interest due on a hypothecation bond which contained the following covenants—(1) that the obligor would pay interest at one per cent. per mensem in two half-yearly instalments on the 25th Thulam and the 25th Medom every year, (2) that the obligor would repay the principal five years after the date of the document and discharge the mortgage debt, (3) that in case of default in the payment of interest at any one instalment, the obligee was at liberty to realise the principal and arrears of interest before the expiry of the term of five years. The plaintiff had sued on the hypothecation bond for interest in a prior suit, reserving his rights to sue subsequently for the principal and had obtained a decree.

It was contended for the defendant that Section 39 barred the present suit.

*Held.*—(1) The suit was competent. Where there were no distinct covenants relating to the payment of the principal and interest, a suit for interest alone will bar a subsequent suit for the principal. But where there were distinct covenants relating to the payment of the principal and interest, the plaintiff might enforce the covenants relating to the payment of the interest without losing his rights to his subsequently suing for the principal. In the

*Illustration.*

A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907.

---

present instance there were distinct covenants relating to the payment of the interest by two half-yearly instalments and of the principal five years after the date of the document.

(2) The contention of the defendant based on the third covenant in the hypothecation bond, that when default was made in the payment of any one instalment of the interest, the whole principal and interest became due even before the expiry of the term of five years, and therefore, as the whole amount due was not claimed in the prior suit the part not claimed should be regarded as having been given up, was also unsustainable. In the prior suit, the plaintiff had expressly sued for the interest reserving his rights to claim the principal later. No objection was raised in the written statement filed by the defendant. It might be regarded, therefore, as a case where subsequent to the default, the plaintiff had demanded and the defendant had agreed to pay that amount which would have been due if there had been no penalty provided for the default.—
**18 T. L. J.**, *315*.

**25.** It may be taken as settled law that where there is a special and distinct agreement for payment of interest as distinguished from the principal, a suit can be maintained for the interest alone, as the cause of action therefor may be treated as distinct. The question in each case would therefore be, whether the terms of the document sued on are such as to denote a distinct agreement for the payment of interest.

Where a hypothecation bond covenanted to pay interest every year and to pay the principal after the expiry of a period of five years from the date of the bond together with any interest that may then be due:

*Held.*—The cause of action for the principal accrued only at the end of five years, while the cause of action for each year's interest accrued at the end of the year. It was thus clear that the agreement for the payment of interest was distinct from the agreement to pay the principal, and the difference in the time of accrual of the right to demand them necessarily made the cause of action distinct.—**18 T. L. J.**, *894*.

**26.** The plea of relinquishment based on Order II, Rule 2, cannot apply to execution proceedings, as such proceedings cannot be treated as suits within that Rule.

The only bar that could with propriety be considered permissible to be raised in such cases will be where the application of the principle of constructive *res judicata* by way of analogy is possible.

The modification referred to in Article 309, Civil Courts' Guide, may be with respect to the whole or a part of the decree. [The Article requires appellate decrees, where they modify the decrees of the lower Court, to be self-explanatory].—
**19 T. L. J.**, *920*.

**27.** See also—

Sec. 8.— **K. P.**, *287*.
Sec. 10.— **25 T. L. R.**, *118*.
Or. XX, r. 12.—**6 T. L. J.**, *255*.
,, XXII, r. 3.—**35 T. L. R.**, *30*.

3. (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

Joinder of causes of action.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.

---

**Or. II, r. 3** [ = S. 41, Paras 1 & 3
= *Or. II, r. 3*
= En. O.18, r. 1 ]

I. Sec. 41, Paras 1 and 3, of the old Regulation, was as follows :—

"Subject to the Rules contained in Chapter II and in Section 40, the plaintiff may unite in the same suit...... causes of action in the same suit."

"When causes of action are united......at the date of instituting the suit, whether or not an order has been made under the second paragraph of this Section."

[Chapter II deals with the place of suing. For the old Section 40, see Rule 4 and for the second paragraph of Section 41, see Rule 6, below.]

II. This Rule is to be read with Rules 4 to 7 of this Order and with Rules 1 and 3 of Order I.

III. Rule 1 of Order XVIII of the Rules of the Supreme Court, 1883, is as follows:—
"1. Subject to the following Rules of this Order, the plaintiff may unite in the same action several causes of action, but if it appear to the Court or a Judge that any such causes of action cannot be conveniently tried or disposed of together, the Court or Judge may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof."

**Case Law.**

1. All formal objections to a suit, such as mis-joinder, &c., ought to be taken before the settlement of issues. The assignor being liable to account to the assignee, on the failure of the claim founded upon the assignment, his inclusion as co-defendant is not bad for mis-joinder. He has an interest in the result of the suit, and there is no provision of law prohibiting the inclusion of a person in his position as a defendant. Reason and logic point to the conclusion that in many cases the fact of the assignor being a party to the suit brought by the assignee would check unnecessary litigation. The modern tendency of decision and legislation is to discourage pleas of mis-joinder.— **3 T. L. R., 16.**

2. Where several causes of action are joined together, each of which is within the jurisdiction of a Munsiff's Court, but the entire claim exceeds its jurisdiction, the Zillah Court is not incompetent to try such suit (F. B.).— **3 T. L. R., 31.**

3. A suit was brought by certain junior members of a Tarwad *to set aside a mortgage* granted by their Karanavers and also *to set aside a decree and attachment thereunder* was said to be irregular on account of mis-joinder of causes of action:

*Held.*—(1) The language of Section 41 of the Code of Civil Procedure being very

wide, the suit was not vitally defective because of the joinder of the two causes of action, inasmuch as the suit was brought in the interests of the Tarwad and both reliefs claimed concerned Tarwad property, although it might have been more convenient to separate the reliefs demanded in the plaint and divide the causes of action into two suits.

(2) In a suit to set aside a decree and attachment thereunder where the Karanavars are not plaintiffs, the making them defendants is not fatal to the suit, provided it could be shown that there was neglect of duty or collusion on their part. A Full Bench in S. A. No. 194 of 1063, held 'If the circumstances of the case show that by making the Karanavan defendant, the plaintiff meant to charge him with neglect of duty or collusion, the fact that the plaint contains no distinct charge against the Karanavan is not *per se* sufficient to non-suit the plaintiff'.— **13, T. L. R.**, *128.*

**4.** In a suit by plaintiffs to recover value of properties of which they were plundered by the defendant and in some of which the plaintiffs were jointly and in the others severally interested, the defence was one of mis-joinder of plaintiffs and distinct causes of action.

*Held*,—The suit was not bad for mis-joinder.

'Cause of action' used in Section 26 C. P. C. (British), is not used in its comprehensive or elastic but in a restricted or limited sense "so as to include the fact constituting the infringement of the right but not necessarily also those constituting the right itself, so that the qualification implied in the words in respect of the same cause of action will be satisfied if the facts which constitute the infringement of the right of several plaintiffs are the same, though the fact constituting the rights upon which they base their claim to that relief in the alternative may not be the same and that as the plaintiffs complained of the same wrongful act of the defendant and as they claimed the same relief, the case came within Section 26 C. P. C." (22 Cal. 833). [ Section 26 = Or. I, r. 1.]

The full value of the chattel at the time of the conversion was the measure of damages.— **14 T. L. R.**, *185.*

**5.** The suit was for possession of a land purchased by plaintiff at a Court sale held in execution of a decree or for recovery of the purchase money in the event of its being found that the judgment-debtor had at the date of plaintiff's purchase, no saleable interest in the property. It was contended that the claim for land and the claim for purchase money arose out of two distinct causes of action and therefore, the suit could not be maintained. The District Judge returned the plaint to the plaintiff for amendment by withdrawing one of the two prayers in the plaint on the ground that the suit was bad for mis-joinder of causes of action.

*Held*.—Although two reliefs are prayed for in the alternative, yet as those reliefs arise out of the same right, the suit is not bad for mis-joinder of causes of action.

The joinder of claims for alternative reliefs is sanctioned by Section 24 C. P. C. (old) [ = Or. I, r. 3 ]. The joint effect of Sections 24, 27 and 41 is to enable a plaintiff to bring a suit with a prayer for alternative reliefs when such reliefs are claimed in respect of the same subject-matter, the power being reserved in the Courts to direct the separate trials of such claims if they could not be conveniently proceeded with in the same suit. In the case, the main question for the trial is simple, and the claim for alternative relief depends entirely upon the result of the trial of the main issue as to the validity of the court-sale in plaintiff's favour and does not need a separate trial. The cause of action is the right of the plaintiff as a court-purchaser and the infringement or violation of

that right, and though distinct reliefs are prayed in the alternative, those reliefs flow from and arise out of the same right. It cannot be said that there is here a joinder of two distinct causes of action diametrically opposed to each other, if the term, cause of action, is to be taken in its widest sense. The decisions of the British Indian High Courts do not lay down a rule of universal applicability in cases like the present, but the rules framed by the English Supreme Court of Judicature Act of 1873 favour the view taken. Rule 5 provides that it shall not be necessary that every defendant shall be interested as to all the reliefs prayed for or as to every cause of action included in any proceeding against him, while Rule 7 provides that "where the plaintiff is in doubt as to the persons from whom he is entitled to redress, he may join two or more defendants to the extent that the question as to which, if any, of the defendants and to what extent, may be determined as between all parties.' Convenience and practice alike demand the adoption of the principles of these Rules by the Courts.—
**15 T. L. R. App., *49.***

Ref.—17 T. L. R., 101.
Dist.—2 S. D., 258.

**6.** The last member of a Marumakkathayam Tarwad executed a mortgage of plaint properties in favour of the plaintiff on 31-2-1069. The deed was duly registered and handed over to plaintiff. The mortgagor died in the same year. In a suit instituted on 31-2 1081 for recovery of the properties from defendants 1 and 2 who were alleged to be trespassers, the 1st defendant contended that certain portions of the plaint properties were not in his possession but in the possession of another. Therefore that person was added as 3rd defendant on 29-3-1083. The contesting defendants 1 and 3 urged that the suit was not maintainable as the mortgage in favour of plaintiff was not supported by consideration and also because the suit was vitiated by mis-joinder of parties and causes of action, the defendants being in possession of separate portions of the plaint properties. The 3rd defendant further contended that, as she has been added as a defendant more than 12 years after the date of mortgage, the suit was barred by limitation.

*Held.*—The cause of action of the plaintiff suing in ejectment not being affected by the title under which the defendants in wrongful possession may seek to justify their possession and the plaintiff being entitled to claim recovery of possession of the whole land, all persons who oppose him in the enforcement of that right are concerned in his cause of action and are necessary parties to the suit, and therefore the suit was not bad for mis-joinder of parties and causes of action.— **23 T. L. R., *150.***

**7.** A leased his claim to several items of land on his title as purchaser at a court-sale. B, C and D dispossessed him of a major portion of the said items. E dispossessed him of the remaining portion. All these claimed to hold under titles created by members of the family whose rights A purchased at the court-sale.

*Held.*—A's causes of action are not distinct, and therefore, there was no mis-joinder. The validity of the plaintiff's purchase was impugned by the defendants and the case was one which could be conveniently tried at one and the same time.

A suit against all the defendants who were interested severally in respect of separate portions of the property mortgaged under a mortgage-bond was held not bad for multifariousness (7 Cal. 739).—
**1 S. D., *39.***

**8.** The reliefs claimed by the plaintiff in the original plaint were based upon different documents, against different persons and upon different causes of action. It was held that it was illegal to join different causes of action in the same suit against the different parties, where each has a distinct and separate interest (21 W. R., 206).
**1 S. D., *309.***

Only certain claims to be joined for recovery of immovable property.

4. No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immovable property, or to obtain a declaration of title to immovable property except—

(a) claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof;

(b) claims for damages for breach of any contract under which the property or any part thereof is held; and

(c) claims in which the relief sought is based on the same cause of action:

Provided that nothing in this Rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property.

---

**9.** The suit was by a sub-mortgagee against his mortgagor, the first mortgagee, for recovery of money personally and from the property mortgaged on the one hand, and for recovery of property mortgaged from strangers who committed trespass upon it, while he was in possession under the sub-mortgage.

*Held.*—There is no provision in the Code allowing distinct causes of action against distinct sets of defendants, that is to say, causes of action in which the defendants are not all jointly interested, to be united in the same suit.— **2 S. D.**, *258.*

**10.** Under Section 41, C. P. C., the plaintiff may unite in one suit even at the very beginning several causes of action against the same defendant or set of joint defendants. The provisions in paras 2 and 3 of Section 41 and in Sections 42 and 43 however as to separate trials under certain circumstances of the different causes of action and as to the power of the Court to compel plaintiff to amend the plaint so as to constitute it into several plaints in distinct suits, &c., clearly point to the conclusion that such a single suit really consists of several separate suits brought at the same time and consolidated for the purpose of convenience and despatch of business.— **3 S. D.**, *218.*

**11.** Suit for declaration that a sale-deed alleged to have been executed by first plaintiff in favour of the defendants and which had been compulsorily registered, was a forgery and for recovery of the plaint properties taken possession of by the defendants on the strength of that sale. The second plaintiff was the daughter of the first plaintiff, and there was an averment in the plaint that some of the properties in the suit had been made a gift of by the first plaintiff to the second plaintiff. The District Judge holding that because in regard to some of the properties a gift deed was alleged to have been executed by the first plaintiff to the second plaintiff, the suit was bad for mis-joinder of causes of action, returned the plaint for amendment.

*Held.*—There was no misjoinder of of action. The facts which accordir plaint constitute an infringeme right of plaintiffs 1 and 2 in the

same. A suit for recovery of possession of certain property by A (as heir of K) and B as purchaser of a portion of the property from A, was held to be maintainable and not bad for mis-joinder of causes of action (33 Cal., 367). **23 T. L R.,** *148.*

---

**Or. II, r. 4** [ = S. 40 = *Or. II, r. 4* = En. Or. 18, r. 2]

I. **1.** Section 40 of the old Regulation was as follows :—

"40. *Only certain claims to be joined with suit for recovery of land.*—No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immovable property, or to obtain a declaration of title to immovable property, except—

(*a*) claims in respect of mesne profits or arrears of rent in respect of the property claimed,

(*b*) damages for breach of any contract under which the property or any part thereof is held, and

(*c*) claims by a mortgagee to enforce any of his remedies under the mortgage.

Nothing in this Section prevents the joining in a suit for partition of family property, of a claim to movables with a claim to immovable property, or of a claim to set aside an alienation of the property sued for with a claim to division."

**2.** The second para in the above Section was added by the Select Committee who said :—"The object of the addition is to remove any doubt which may fairly arise on the wording of the Section as to whether in a single plaint, partition of movables and immovables and cancellation of improper alienations made in respect of the property sought to be divided may be claimed.''

The Proviso which is new and taken from English Rules, has been added "to following the English Rule, that in a suit for foreclosure or redemption, a prayer may be added for delivery of possession." (Objects and Reasons, 1901 amending Bill).— *India Gazette dated 21-12-1901, Pt. V.*

III. Rule 2 of Order XVIII of the Rules of the Supreme Court, 1883, as amended, is as follows:—"2. No cause of action shall, unless by leave of the Court or a Judge, be joined with an action for the recovery of land except claims in respect of mesne profits or arrears of rent or double value in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof are held or for any wrong or injury to the premises claimed :

Provided that nothing in this Order contained shall prevent any plaintiff in an action for foreclosure or redemption from asking for or obtaining an order against the defendant for delivery of possession of the mortgaged property to the plaintiff on or after the order absolute for foreclosure or redemption, as the case may be, and such an action for foreclosure or redemption, and for such delivery of possession shall not be deemed an action for the recovery of land within the meaning of these Rules.

Provided also, that in case any mortgage security shall be foreclosed by reason of the default to redeem by any plaintiff in a redemption action, the defendant in whose favour such foreclosure has taken place may by motion or summons apply to the Court or a Judge for an order for delivery to him of possession of the mortgaged property, and such order may be made thereupon as the justice of the case shall require."

**Case Law.**

See Or. II, r. 2.—**23 T. L. R.,** *248.*
**1 T. L. J.,** *278.*

---

5. No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him personally, unless the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

Claims by or against executor, administrator or heir.

6. Where it appears to the Court that any causes of action joined in one suit cannot be conveniently tried or disposed of together, the Court may order separate trials or make such other order as may be expedient.

Power of Court to order separate trials.

---

**Or. II, r. 5** [ = ,, = *Or. II, r. 5* = En. Or. 18, r. 5 ]

Rule 5 of Order XVIII of the Rules of the Supreme Court, 1883, is as follows :—

"5. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator."

This Rule was intended to apply to cases "where the executor or administrator has been dealing with the assets or making contracts in the course of the administration properly and fairly in his character of executor or administrator, and then it becomes a question whether, the contracts being personally entered into by him, he should be sued in his character of legal personal representative, or in his personal character."
*Yearly Practice for 1925.*

---

**Or. II, r. 6** [ = S. 41, Para 2 = *Or. II, r. 6* = En. Or. 18, r. 1 ]

I. Para 2 of Section 41 of the old Regulation was as follows :—

"*Court may order separation.*—But if it appear to the Court that any such causes of action cannot be conveniently tried or disposed of together, the Court may, at any time before the first hearing, of its own motion or on the application of any defendant, or at any subsequent stage of the suit, if the parties agree, order separate trials of any such causes of action to be had, or make such other order as may be necessary or expedient for the separate disposal thereof."

II. For Rule 1 of Order XVIII of the English Rules, see under Rule 3 *Supra.*

### Case Law.

**1.** In cases wherein several causes of action cannot be properly or conveniently tried together, the Court should deal with them separately as sub-suits under the title and number of the principal suits from which they spring.— **15 T. L. R., *118*.**

**2.** An order of splitting up under Section 41 presupposes that there was no misjoinder of causes of action or parties and the splitting was for convenience of trial.— **K. P., *357*.**

**3.** The order of dismissal for mis-joinder was passed by the Judge after the settlement of issues and recording evidence on

Objections as to misjoinder.

7. All objections on the ground of mis-joinder of causes of action shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

---

## ORDER III.

### Recognized Agents and Pleaders.

Appearance, etc., may be in person, by recognized agent or by pleader.

1. Any appearance, application or act in or to any Court, required or authorised by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf :

---

the merits of the case. The Judge asked the Vakil to amend the plaint by withdrawing the suit as against any one defendant against whom there existed a distinct cause of action. No formal order was passed by the Judge on the subject, and the amendment in the mode suggested was not the proper thing to be done in the case. Separate trials of the several causes of action should have been directed in the manner provided by Section 41, and it was further for the defendant to apply under Section 42, before any evidence was recorded, for an order confining the suit to such of the causes of action as might be conveniently disposed of in one suit.— 1 S. D., *39.*

[For Section 42, see Rule 7 *Infra*].

**Or. II, r. 7** [ *Cf.* S. 42 = *Or. II, r. 7* ]

Section 42 of Regulation II of 1065 is given below for comparison. Section 43 of the same Regulation which has been omitted is also subjoined for reference :—

"42. *Defendant may apply to confine suit.*—Any defendant alleging that the plaintiff has united in the same suit several causes of action which cannot be conveniently disposed of in one suit may, at any time before the first hearing, or, where issues are settled, before any evidence is recorded, apply to the Court for an order confining the suit to such of the causes of action as may be conveniently disposed of in one suit."

"43. *Court on hearing application may exclude some causes and order amendment.*—If, on the hearing of such application, it appears to the Court that the causes of action are such as cannot all be conveniently disposed of in one suit, the Court may order any of such causes of action to be excluded, and may direct the plaint to be amended accordingly, and may make such order as to costs as may be just.

Every amendment made under this Section shall be attested by the signature of the Judge."

**Or. III, r. 1** [ = S. 32 = *Or. III, r. 1* ]

In the corresponding Section 32 of Regulation II of 1065, the words "to a suit or appeal" occur before the words "in such Court."

Provided that any such appearance shall, if the Court so directs, be made by the party in person.

Recognized agents.

2. The recognized agents of parties by whom such appearances, applications and acts may be made or done are—

(a) persons holding powers-of-attorney, authorising them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorised to make and do such appearances, applications and acts.

---

**Case Law.**

1. That the recognised agents of parties, residing out of the jurisdiction of the Court, are entitled to make applications and appearances on behalf of their principals, without themselves being made formal parties to the case, is clear law.—

**6 T. L. R.,** ***90.***

2. A recognised agent coming under Clause 2 of Section 15 (Regulation II of 1037) cannot prosecute a suit in his own name. But a defect of this nature which does not affect the jurisdiction of the lower Court or the merits of the case, cannot justify a dismissal of the suit. In the case, the objection to the formal defect was taken for the first time in the High Court in appeal. It is, therefore, nothing but fair that the plaintiff should be allowed a reasonable time, to make his principal formally a party to the suit, though the plaintiff (the agent) may conduct it as a recognised agent under Section 15 of the Civil Procedure Code.

[Clause 2 of Section 15 of Regulation II of 1037 was as follows :—"Persons carrying on trade or business for and in the name of parties not within the jurisdiction of the Court in matters connected with such trade or business only, where no other agent is expressly authorized to make such applications or appearances"].— **8 T. L. R.,** ***30.***

3. Three items of property belonging to defendants 1 and 2 were charged by the decree in the case. The 3rd defendent having obtained a mortgage of item 2 from the 2nd defendant, the 3rd defendant was made a party to the suit. Subsequently, in execution of the decree, item No. 3 was sold in court-auction. The 3rd defendant deposited the decree amount into Court and applied to set aside the auction sale under Section 307-A [Or. XXI, r. 86]. The auction purchaser objected on the ground that the 3rd defendant had no *locus standi* to make such application.

*Held.*—Even assuming that the 3rd defendant was acting as the agent of the 2nd defendant (as to which there was no evidence in the case), the application could not be regarded as having been made by the 3rd defendant in that capacity, as it was unaccompanied by any writing to show that

he was a recognised agent as defined under Section 38, C. P. C., [Or. III, r. 2] empowered to make an application under Section 32.— **13 T. L. J.,** *373.*

**4.** See also—

Or. I, r. 12.—**7 T. L. R.,** *165.*
„ III, r. 2. —**18 T. L. R.,** *65.*

---

**Or. III, r. 2** [ = S. 38 = *Or. III, r. 2*]

**1.** Clause (*a*) of Section 38 of the old Regulation was as follows:— "(*a*) Persons holding general powers of attorney from parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, authorizing them............on behalf of such parties."

**2.** The word 'general' has been omitted as unduly restrictive. The restriction involved in the reference to parties not resident within the local limits of the jurisdiction of the Court has been removed.—
*India Gazette*
*dated 21-3-1903, Pt. V.*

**Case Law.**

**1.** A Muktear of the Dewan of Cochin sued in his own name to compel the Kanapattom tenant of a Devaswom to take renewal. The Devaswom had its own Ooralers and was in evident management by the Cochin Sirkar.

*Held.*—(1) The Muktear had no right to sue on behalf of the Cochin Sirkar in his own name by virtue of the Power-of-Attorney given him by the Dewan of Cochin.

The general maxim of law *delegatus non potest delegare* applies to all cases of delegated authority. Where, however, the act to be done is one of a personal nature, *i. e.*, where the delegatee is to derive the benefit of the act, there seems to be no objection to such delegation; but in all other cases, unless expressly empowered by statute or approved of by moral necessity, delegation is prohibited.

A trustee cannot delegate his office, which is one of personal confidence, in the absence of express authority so long as he remains a trustee. He may however in case of moral necessity do so. This would not however protect a trustee who employs an improper agent for the purpose in question. So also where personal skill is required, or in the cases of powers of appointment. In the one case, personal skill is the essence of the delegation, and in the other, a personal confidence and trust in the donee of the power to exercise it with discretion and judgment falls within the maxim *delegatus non potest delegare.* Neither for like reasons, can an *agent* or judicial officer delegate the authority conferred on him.

It was urged on behalf of the plaintiff that, according to Section 8 of Regulation II of 1070 [new Section 66-B], the Dewan being the representative of the Rajah of Cochin, he must be treated as the principal, inasmuch as he sues in his own name, and hence he may as principal delegate his authority under Section 38 [Or. III, r. 2]. This would be unduly extending the provisions of the Civil Procedure Code in force. A representative suing in his own name as principal is at best an agent of the real principal. The agent may not, as a rule, depute another person to do that which he has undertaken to do. The reason of this rule and its limitations are thus stated. "As a general rule, no doubt, the maxim *delegatus non potest delegare* applies so as to prevent an agent from establishing the relationship of principal and agent between his own principal and a third person, but this maxim when analysed merely imports that an agent cannot without the authority from his principal devolve upon another obligations to the principal which he has himself undertaken personally to fulfil and that inasmuch as confidence in the particular person employed is at the root of the contract of agency, such authority cannot be implied as an ordinary incident to the contract."

Service of process on recognized agent.

3. (1) Processes served on the recognized agent of a party shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.

(2) The provisions for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

Appointment of pleader.

4. (1) The appointment of a pleader to make or do any appearance, application or act for any person shall be in writing, and shall be signed by such person or by his recognized agent or by some other person duly authorised by power-of-attorney to act in this behalf.

(2) Every such appointment, when accepted by a pleader, shall be filed in Court, and shall be considered to be in force until determined, with the leave of the Court, by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies or until all proceedings in the suit are ended so far as regards the client.

(3) No Government Pleader shall be required to present any document empowering him to act on behalf of Our Government.

(4) Notwithstanding the termination of all proceedings in the suit so far as regards the client, the appointment of a pleader shall, unless otherwise provided therein or determined by the death of the client or the pleader or by revocation in accordance with the provisions of Sub-rule (2) of this Rule, be deemed to authorise

---

The agent under Section 83, C. P. C., having no *independent* rights cannot delegate his authority. He may however leave the conduct of litigation in the hands of a recognised pleader, in which case he is presumed to instruct such pleader and to be exercising that control in the management of the affairs of his principal with which he was specifically entrusted.

(2) As there were Ooralers in the Devaswom and the Cochin Sirkar was in management as agent of the Ooralers, the said Sirkar could not maintain a suit in spite of the Ooralers. A mere manager is simply an agent of the Ooralers and could not maintain a suit in opposition to and against the will of his principal (F. B.).—

**18 T. L. R., *65*.**

Ref.—2 S. D., 40.

2.. See also —

Or. III, r. 1.—**6 T. L. R., *90*.**
**8 T. L R., *30*.**
**13 T. L J., *273*.**
Or. IX.— **19 T. L. J., *643*.**

---

**Or. III, r. 3** [ = S. 34 = *Or. III, r. 3* ]

---

him to appear or to make any application or to do any act in connection with getting copies of documents and obtaining return of documents produced or filed in the suit or refund of money paid into Court in the suit.

Service of process on pleader.

5. Any process served on the pleader of any party or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person.

Agent to accept service.

6. (1) Besides the recognized agents described in Rule, 2, any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

Appointment to be in writing and to be filed in Court.

(2) Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument or, if the appointment is general, a certified copy thereof shall be filed in Court.

---

**Or. III, r. 4** [= S. 35 = *Or. III, r. 4*]

I. Sub-Rule (4) of this Rule is not found in the British Indian Code. It was added by the Select Committee.

II. The corresponding Section 35 of the old Regulation was as follows :—

"35. *Appointment of pleader.*—The appointment of a pleader to make or do any appearance, application or act as aforesaid, shall be in writing, and such appointment shall be filed in Court.

When so filed, it shall be considered to be in force until revoked with the leave of the Court, by a writing signed by the client and filed in Court, or until the client or the pleader dies, or all proceedings in the suit are ended so far as regards the client.

No Sirkar Vakil shall be required to present any document empowering him to act on behalf of Government."

**Case Law.**

A plaint is validly presented if it had been presented by a pleader whose Vakalat had been filed in Court, even though he had not accepted it in writing.—**13 T. L. J.**, *82*.

**Or. III. r. 5** [= S. 36 = *Or. III, r. 5*]

**Or. III, r. 6** [= S. 37 = *Or. III, r. 6*]

## ORDER IV.

### Institution of Suits.

Suit to be commenced by plaint.

1. (1) Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

(2) Every plaint shall comply with the Rules contained in Orders VI and VII, so far as they are applicable.

Register of suits.

2. The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the Register of Civil Suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted.

---

## ORDER V.

### Issue and Service of Summons.

*Issue of Summons.*

Summons.

1. (1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified:

---

**Or. IV, r. 1** [= S. 44 = *Or. IV, r. 1*]

1. For the corresponding Section (44) of the old Regulation see Section 24, *Supra*.

2. Sub-rule (2) is new.

---

**Or. IV, r. 2** [= S. 54, last Para = *Or. IV, r. 2*]

I. The last Para of Section 54 of the old Regulation was as follows:—"*Register of suits.*—The Court shall also cause the particulars mentioned in Section 46 to be entered in a book to be kept for the purpose and called the Register of Civil Suits. Such entries shall be numbered in every year according to the order in which the plaint is admitted."

[For Section 46 referred to, see Order VII, Rules 1 and 2, and 4 to 6.]

II. See Order VII, Rule 9, for the other Paras of Section 54.

III. For Form of Register of Civil suits, see Appendix I, Form No. 14.

**Case Law.**

Neither the provisions of the Civil Courts' Guide nor the Rules framed under the Insolvency Regulation warrant the treatment of the applications for annulment under Section 36 of the Insolvency Regulation as Original suits. The unjustifiable treatment of the applications as plaints and numbering thereof as suits would not constitute the decisions in the cases decrees within the meaning of Section 2 (2) of the Civil Procedure Code.— **45 T. L. R., 869.**

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

(2) A defendant to whom a summons has been issued under Sub-rule (1) may appear—

(*a*) in person, or

(*b*) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(*c*) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

Copy or statement annexed to summons.

**2.** Every summons shall be accompanied by a copy of the plaint or, if so permitted, by a concise statement.

---

**Or. V, r. 1** [= S. 60 = *Or. V, r. 1*]

I. The corresponding Section of the old Regulation was as follows :—

"60. *Summons.*—When the plaint has been registered, and concise statements required by Section 54 have been filed, a summons may be issued to each defendant to appear and answer the claim on a day to be therein specified,

(*a*) in person, or

(*b*) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(*c*) by a pleader accompanied by some other person able to answer all such questions.

Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court :

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim."

II. For Section 54 of the old Regulation referred to above, see Order IV, Rule 2, and Order VII, Rule 9.

III. See also Section 25, *Supra*.

IV. For Forms of Summons for disposal of suit and for settlement of issues, see Appendix B, Forms Nos. 1 and 2.

**Case Law.**

The defendant in a suit has a right to be allowed the minimum time prescribed under Article 632 of the Civil Courts' Guide between the date of the service of process as shown in the return of the process-server and the date of the first hearing.

The provisions of the Civil Courts' Guide have the force of law, as they have been enacted under the Rule making powers conferred on the High Court under Section 591 (new Section 91), C. P. C.—

**19 T. L. J.,** ***690.***

**Or. V, r. 2** [= S. 61 = *Or. V, r. 2*]

Section 61 of the old Regulation was as follows :—

Court may order defendant or plaintiff to appear in person.

3. (1) Where the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

No party to be ordered to appear in person unless resident within certain limits.

4. No party shall be ordered to appear in person unless he resides—

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the court-house.

Summons to be either to settle issues or for final disposal.

5. The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly:

Provided that, in every non-appealable case, the summons shall be for the final disposal of the suit.

---

"61. *Statement annexed to summons.*—Every such summons shall be accompanied with one of the concise statements mentioned in Section 54."

For Section 54 referred to, see Order VII, Rule 9.

—

**Or. V, r. 3** [ = S. 62 = *Or. V, r. 3* ]

1. See Order IX, Rule 12, as to failure to appear.

2. For Form of Summons to appear in person, see Appendix B, Form No. 3.

—

**Or. V, r. 4** [= S. 63 = *Or. V, r. 4*]

Section 63 of the old Regulation was as follows:—

"63. *No party to be ordered to appear in person unless resident within 50 miles.*—No party shall be ordered to appear in person unless he resides—

(a) within the local limits of th[illegible] ordinary original jurisdi[illegible]

(b) without such limits a[illegible] less than 50 miles fr[illegible] house."

—

Fixing day for appearance of defendant.

6. (1) The day for the appearance of the defendant shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

(2) What shall be deemed "sufficient time" must be determined with reference to the circumstances of the case and shall, for the purpose of appeal or revision, be treated as a question of law.

Summons to order defendant to produce documents relied on by him.

7. The summons to appear and answer shall order the defendant to produce all documents in his possession or power upon which he intends to rely in support of his case.

On issue of summons for final disposal, defendant to be directed to produce his witnesses.

8. Where the summons is for the final disposal of the suit, it shall also direct the defendant to produce, on the day fixed for his appearance, all witnesses upon whose evidence he intends to rely in support of his case.

---

**Or. V, r. 5** [ = S. 64 = *Or. V, r. 5* ]

For Forms of Summons, see Appendix B, Forms Nos. 1 and 2.

**Or. V, r. 6** [ = S. 65 = *Or. V, r. 6* ]

Sub-rule (2) is not found in the British Indian Code. It was omitted as redundant by the Select Committee on the 1901 Bill.—

*India Gazette dated 21-3-1903, Pt. V, P. 173.*

**Or. V, r. 7** [= S. 66 = *Or. V, r. 7* ]

I. Section 66 of the old Regulation was as follows:—

*Summons to order defendant to documents required by plaintiff or by defendant.*—The summons to answer shall order the defendant any document in his possession containing evidence relating to the plaintiff's case, or upon which the defendant intends to rely in support of his case.

II. The above was the same as Section 70 of the old Indian Code of 1882 from which it was adopted. The Indian Select Committee which sat on the Bill of 1901 proposed the present provision. They said:—"We have abridged this provision because, while the defendant should certainly produce all documents in his possession or power in so far as he relies on them in support of his case, it seems to us unreasonable to require him to produce any document merely because it may relate to the merits of the case for the plaintiff."—

*India Gazette dated 21-3-1903, Pt. V, P. 173.*

**Or. V r. 8** [ = S. 67 = *Or. V, r. 8* ]

*Service of Summons.*

Delivery or transmission of summons for service.

9. (1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent to the proper officer to be served by him or one of his subordinates.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him by post or in such other manner as the Court may direct.

Mode of service.

10. Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

Service on several defendants.

11. Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.

---

**Or. V, r. 9** [ = S. 68 = *Or. V, r. 9* ]

Section 68 of the old Regulation was as follows :—

"68. *Delivery of summons for service.*—The summons shall be delivered to the proper officer of the Court, to be served by him or one of his subordinates."

---

**Or. V, r. 10** [ = S. 69 = *Or. V, r. 10* ]

---

**Or. V, r. 11** [ = S. 70 = *Or. V, r. 11* ]

I. Section 70 of the old Regulation was as follows :—

"70. *Service on several defendants.*—When there are more defendants than one, service of the summons shall be made on each defendant :

Provided that, if the defendants are partners, and the suit relates to a partnership transaction or to an actionable wrong in respect of which relief is claimable from the firm, the service may be made, unless the Court directs otherwise, either (*a*) on one defendant for himself and for the other defendants, or (*b*) on any person having the management of the business of the partnership, at the principal place, within the local limits of the Court's ordinary original Civil jurisdiction, of such business."

II. The addition at the beginning of the new Section and the omission of the Proviso, in the British Indian Code, (which is followed in the present Regulation) was explained "by the proposal to insert a n[illegible] Chapter dealing more comprehen[illegible] with the subject of suits by and [illegible] partnerships."— *India Gazet[illegible] dated 21-12-1901, P[illegible]*

III. See also Order XXX[illegible]

---

12. Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

Service to be on defendant in person when practicable or on his agent.

13. (1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

Service on agent by whom defendant carries on business.

(2) For the purpose of this Rule, the master of a ship shall be deemed to be the agent of the owner or charterer.

14. Where in a suit to obtain relief respecting, or compensation for wrong to, immovable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

Service on agent in charge in suits for immovable property.

15. Where in any suit the defendant cannot be found and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him.

Where service may be on male member of defendant's family.

*Explanation.*—A servant is not a member of the family within the meaning of this Rule.

16. Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

Person served to sign acknowledgment.

---

…, 12 [ = S. 71 = *Or. V, r. 12* ]

—

… = S. 72 = *Or. V, r. 13* ]

—

…. 73 = *Or. V, r. 14* ]

Or. V, r. 15 [ = S. 74 = *Or. V, r. 15* ]

—

Or. V, r. 16 [ = S. 75 = *Or. V. r. 16* ]

—

Procedure when defendant refuses to accept service or cannot be found.

17. Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

---

**Or. V, r. 17** [ = S. 76 = *Or. V, r. 17*]

I. Section 76 of the old Regulation was as follows :—

"76. *Procedure when defendant refuses to accept service or cannot be found*.—If the defendant or other person refuses to sign the acknowledgment, or

if the serving officer cannot find the defendant, and there is no agent empowered to accept the service of the summons on his behalf, nor any other person on whom the service can be made,

the serving officer shall affix a copy of the summons on the outer door of the house in which the defendant ordinarily resides and then return the original to the Court from which it issued, with a return endorsed thereon or annexed thereto, stating that he has so affixed the copy and the date on, and the circumstances under which, he did so."

II. The new Rule reproduces that in the British Indian Code; and some of the changes made in that Code are thus explained.

1. The words "after using all due and reasonable diligence" have been inserted to give effect to the rulings to the effect that the serving officer is bound to use deligence.

*India Gazette dated 21-12-1901, Pt. V.*

2. "In this country many houses have nothing which, without a stretch of language, can be described as 'outerdoors.' In such a case, any other conspicuous part of the house should be sufficient.— *Ibid.*

3. In regard to identifying persons or houses, it was observed that "on the whole it would seem expedient to provide in the return endorsed on the summons for, at least, one identifier whom the Court or the parties can call as a witness in case of a dispute with respect to the sufficiency of service."— *Ibid.*

4. The words "(if any)" have been inserted because "the Code should not render absolutely illegal the service of process without an identifier."—*India Gazette dated 21-3-1903, Pt. V.*

### Case Law.

1. The mode of service contemplated by Article [illegible] of the Limitation Regulation is one where the party served accepts the notice and duly signs the acknowledgment,

Where the party refuses to sign the acknowledgment and the service is, accordingly, effected under Sections 76, 77 and 78 of the Civil Procedure Code, it cannot be said that there is "service personally of the notice," within the meaning of the above said Article.— **34 T. L. R.,** ***174.***

Fol.—37 T. L. R., 290
(=12 T. L. J., 262).
Ref.—18 T. L. J., 992.

**2.** Mere temporary absence of the person to be served with the writ is not to be regarded as sufficient to justify the process-server resorting to substituted service, as by affixing the summons to the door. Section 76 of the Civil Procedure Code is intended for cases in which the writ of summons should be affixed in the way required by that Section after a proper attempt has been made to find the defendant. It is the duty of the peon entrusted with the process to make reasonable efforts to find out the person to be served. When a serving officer finds a defendant to be away temporarily from home and knows where he is, it is not good service of summons under Section 76 if he thereupon does nothing more than fix the summons to the outer door of the house, but he must make further efforts to effect personal service. Whenever it is practicable, the service of summons must be in person, and it is only when reasonable grounds exist for believing that the defendant is keeping out of the way to avoid service or for other reasons personal service cannot be effected, that substituted service should be ordered or effected. The object of the service of a summons (other than substituted service) is that the defendant may have information of the institution of the suit in due time before the day fixed for the hearing. In order that substituted service may be declared to be due service under Section 78 of the Civil Procedure Code, the Court must be satisfied that the defendant may, from the circumstances, be considered to be aware that the writ is out against him.—

**36 T. L. R.,** ***190***
**(=10 T. L. J.,** ***314*****).**

**3.** The mode of service of notice contemplated in Article 136 of the Limitation Regulation is the one where the party served accepts the notice and duly signs the acknowledgment. Where the party refuses to sign the acknowledgment and consequently the service is effected under Sections 76, 77 and 78 of the Civil Procedure Code, there is no "service personally of the notice" within the meaning of that Article.—

**37 T. L. R.,** ***290***
**(=12 T. L. J.,** ***262*****).**

**4.** A substituted service of summons under Section 76 (old) is not a personal service within the meaning of Article 149 of the Limitation Regulation (1100).

Where the serving officer fails to affix the summons as required by Section 76 such omission renders the service improper.

A preliminary objection was taken to the maintainability of the appeal on the ground that the decree sought to be set aside and restoration prayed for was passed in a Small Cause suit. Under Section 6, the provisions relating to appeals against orders refusing to set aside decrees passed *ex parte* have not been declared applicable, and as the objection was well founded, the appeal was treated as a revision petition as prayed for.— **18 T. L. J.,** ***992.***

**5.** The service of summons as contemplated by Order V, Rule 17, can be effected when the defendant cannot be found after the serving officer had used all due and reasonable diligence to find out the defendant. What he is expected to do in this matter is to go to the place or places and at the time the defendant can be reasonably expected to be present; whether such reasonable efforts have been made in a particular case will have to be decided with reference to the facts of that case.

The temporary absence which would justify the resort to the provisions of Rule 17 would be absence for a reasonably short period after which the defendant's return could, with a certain amount of certainty, be expected.

Endorsement of time and manner of service.

18. The serving officer shall, in all cases in which the summons has been served under Rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

Examination of serving officer.

19. Where a summons is returned under Rule 17, the Court shall, if the return under that Rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

---

Where the defendant had gone to a different place altogether and where no definite information is had as to the time of his return, it would be anamalous to hold that the process-server should await his return for an indefinite period and effect the service of the writ personally. Nor is it possible for him to follow him to any other village, where he is not in possession of information as to the exact place where the defendant could be found.

The residence required to be specified in the plaint under Clause 5 of Rule 9 of the Civil Courts Guide has reference to his permanent place of residence and not places where he had gone with intent to return back to such permanent place of residence.
**19 T. L. J.,** *365.*

**Or. V, r. 18** [= S. 77 = *Or. V, r. 18*]

I. This Rule reproduces Section 77 of the old Regulation with the addition at the end of the words "and the name and address .........tender of the summons." as in the British Indian Code. See Note under previous Rule.

II. For From of Affidavit of process-server, see Appendix B, Form No. 10.

**Or. V, r. 19** [= S. 78, Para 1
= *Or. V, r. 19*]

I. The words "If the return under that Rule.........if it has been so verified" are an addition to the old Section taken from the British Indian Code.

II. There is no provision in the Code of Civil Procedure relating to the service of a fresh summons on a minor defendant on his attaining majority. On the other hand, it would seem that it is for the defendant who has attained age to apply to the Court to discharge the guardian.

"When an infant attains full age during the proceedings, he is entitled to put in a new defence ; but if he takes no steps within a reasonable time after coming of age, he will be bound by what has been done during his infancy."— **16 T. L. J.,** *499.*

Substituted service.

**20.** (1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

Effect of substituted service.

(2) Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

Where service substituted, time for appearance to be fixed.

(3) Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

Service of summons where defendant resides within jurisdiction of another Court.

**21.** A summons may be sent by the Court by which it is issued, either by one of its officers or by post to any Court (not being the High Court) having original jurisdiction in the place where the defendant resides.

---

**Or. V, r. 20** (1) [=S. 78, Para 2 =*Or. V, r. 20 (1)*]
„ „ **20** (2) [=S. 79= „ *r. 20 (2)*]
„ „ **20** (3) [=S. 80= „ *r. 20 (3)*]

The words "or carried on business or personally worked for gain" in Sub-Rule (1) are an addition to the old Section taken from the British Indian Code.

—

**Or. V, r. 21** [ = S. 81, Para 1 = *Or. V, r. 21* ]

I. The first Para of Section 81 of the old Regulation was as follows :—

"81. *Service of summons when defendant resides within the jurisdiction of another Court and has no agent to accept service.*—If the defendant resides within the jurisdiction of any Court other than the Court in which the suit is instituted, and has no agent resident within the local limits of the jurisdiction of the latter Court empowered to accept the service of the summons, such Court shall send the summons, either by one of its officers or by post, to any Court having original jurisdiction at the place where the defendant resides, by which it can be conveniently served, and shall fix such time for the appearance of the defendant as the case may require."

II. For Form of Order for transmission of summons for service, see Appendix B, Form No. 6.

—

**22.** The Court to which a summons is sent under Rule 21 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue, together with the record (if any) of its proceedings with regard thereto.

Duty of Court to which summons is sent.

**23.** Where the defendant is confined in a prison, the summons shall be delivered or sent by post or otherwise to the officer in charge of the prison for service on the defendant.

Service on defendant in prison.

---

**Or. V, r. 22** [ = S. 81, Para 2 = *Or. V, r. 23* ]

I. The wording at the end of the second Para of Section 81 of the old Regulation is :—" to the Court from which it originally issued, together with the record (if any) of service."

II. For Form of record to accompany returns of summons of another Court, see Appendix B, Form No. 9.

---

**Or. V, r. 23** [ = Ss. 82 & 83 = *Or. V, r. 24* ]

I. **1.** Sections 82 and 83 of the old Regulation were as follow :—

" 82. *Service on defendant in jail.*—If the defendant be in jail, the summons shall be delivered to the officer in charge of the jail in which the defendant is confined, and such officer shall cause the summons to be served upon the defendant.

The summons shall be returned to the Court from which it issued, with a statement of the service endorsed thereon, and signed by the officer in charge of the jail and by the defendant.

Such endorsement may be accepted as proof of service."

" 83. *Procedure if jail be in different District.*—If the jail in which the defendant is confined is not in the District in which the suit is instituted, the summons may be sent by post or otherwise to the officer in charge of such jail, and such officer shall cause the summons to be served upon the defendant, and shall return the summons to the Court from which it issued, with a statement of the service endorsed thereon, and signed as provided in Section 82.

Such endorsement may be accepted as proof of service."

**2.** In the Indian Code of 1882, the corresponding Sections 87 and 88 did not contain the words "Such endorsement ........ service." The additions were made to empower the Courts to act upon the report of the jailor who could not, without considerable risk and inconvenience, attend the Court to prove the service of summons in each case."— *S. O & R., Para 14.*

II. "The language of the Rule has been considerably shortened in view of the more general provision we have inserted." See Rule 27 *Infra.*— *India Gazette dated 21-3-1908, Pt. V.*

III. For Form of Order for transmission of summons to be served on a prisoner, see Appendix B, Form No. 7.

---

Service where defendant resides out of Travancore and has no agent.

24. Where the defendant resides out of Travancore and has no agent in Travancore empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Court is situate.

Service on civil public officer or on servant of local authority.

25. Where the defendant is a public officer or is the servant of a local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant.

Service on soldiers.

26. Where the defendant is a military officer or a soldier, the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

Duty of person to whom summons is delivered or sent for service.

27. (1) Where a summons is delivered or sent to any person for service under Rule 23, Rule 25 or Rule 26, such person shall be bound to serve it, if possible, and to return it under his signature, with the written acknowledgment of the defendant, and such signature shall be deemed to be evidence of service.

---

**Or. V, r. 24** [= S. 84 = *Or. V, r. 25*]

1. The corresponding Section 84 of the old Regulation had (1) the words "duly registered" after the word "post"; and (2) the words "or service may be effected in such other manner as the Court may determine" after the word "situate" at the end of the Section.

2. In regard to the words "or service &c." it is noted that the Indian Code of 1882 did not contain them. They were added in the old Regulation in view to "confer upon the Court the power of giving special directions as to the mode of service of summonses in cases where the prescribed methods are found insufficient to procure the service of summons."— *S. O & R, Para 15.*

**Or. V, r. 25** [= S. 407 = *Or. V, r. 27*]

I. Section 407 of the old Regulation was as follows:—

"407. *Service on public Officers.*—Where the defendant is a public Officer, the Court may send a copy of the summons to the head of the office in which the defendant is employed, for the purpose of being served on him, if it appear to the Court that the summons may be most conveniently so served."

II. For Form of Summons, see Appendix B, Form No. 8.

**Or. V, r. 26** [= S. 447 = *Or. V, r. 28*]

(2) Where from any cause service is impossible, the summons shall be returned tothe Court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

Substitution of letter for summons.

**28.** (1) The Court may, notwithstanding anything hereinbefore contained, substitute for summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is, in the opinion of the Court, of a rank entitling him to such mark of consideration.

(2) A letter substituted under Sub-rule (1) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of Sub-rule (3), shall be treated in all respects as a summons.

(3) A letter so substituted may be sent to the defendant by a special messenger selected by the Court, or in any other manner which the Court thinks fit; and where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent.

---

## ORDER VI.

### Pleadings generally.

Pleading.

**1.** "Pleading" shall mean plaint or written statement.

---

**Or. V, r. 27** [ = Ss. 82, 83, 447 = *Or. V, r. 29*]

I. Section 447 of the old Regulation was as follows :—

"447. *Service on officers and soldiers.*—When an officer or a soldier is a defendant, the Court may, in its discretion, send a copy of the summons to his Commanding Officer for the purpose of being served on him.

The officer to whom such copy is sent, after causing it to be served on the person to whom it is addressed, if practicable, shall return it to the Court with the written acknowledgment of such person endorsed thereon.

If from any cause the copy cannot be so served, it shall be returned to the Court by which it was sent, with information of the cause which has prevented the service."

II. For the old Sections 82 and 83, see Rule 23 *Supra.*

III. For Form of Summons, see Appendix B, Form No. 8.

---

**Or. V, r. 28** [ = Ss. 85 & 86 = *Or. V, r. 30*]

Sub-Rule (3) of the Rule corresponds to Section 86 of the old Regulation and to Sub-Rule (3) of Rule 30 of the British Indian Code. In both these, the words, "post or by" occur before the words "a special messenger."

---

**Order VI** : I. "This Order is practically new, and contains provisions applicable to plaints and written statements. There is laid down explicitly and in detail what should be stated in a pleading, and how it

should be said. Decisions, long-standing and uniform, which lay down that, in cases where fraud is set up, facts constituting the fraud should be expressly pleaded, are expressed now in terms in Rule 4 of this Order. There is also laid down what implications are involved by force of Statute, in advancing certain pleas. In fact, the attempt is to enforce the framing of full but brief pleadings enabling the Court as well as the parties to perceive what is and what is not the real dispute in a case. Again, the power to amend is considerably enlarged, and the restrictions now imposed by Statute as to the time and manner of amendment which are not infrequently ignored, are altogether removed. The only limitation is that which the ends of justice may put on the Court's powers in every case according to the circumstances disclosed in that case."—

*Notes on Clauses.*

II. The Indian Special Committee in their Report observe :—"The Committee have added a few Rules relating to pleadings based upon the system of pleading introduced by the Judicature Acts in England which is generally admitted to be the best form of pleading in civil suits. In this country, outside the Presidency-town, the pleadings are seldom artistically drawn. They are neither concise nor precise but contain vague and general statements from which it is difficult to ascertain definitely the real question in controversy between the parties. The sole object of pleadings is thus frequently defeated, the issue is enlarged, the trial is delayed, and much unnecessary expense is incurred by the parties who are also liable to be taken by surprise. They have further provided that the Forms in the Schedule shall when applicable be used for all pleadings, and when they are not applicable, forms of the like character shall be used. The Rules prescribed by us will not prevent the pleader from exercising his discretion ; for the amount of detail must necessarily vary with the nature of each suit. It is however made clear that there must be particularly sufficient to apprise the Court and the other party of the exact nature of the questions to be tried.

"The Committee have also given a party who considers that his opponent's pleading does not give him the information to which he is entitled, the right to apply for further particulars so as to enable him to know what case he has to meet at the trial."

"They have, however, endeavoured to modify the rigour of the Rules by providing in accordance with Section 58 of the Indian Evidence Act that the Court may, notwithstanding the absence of any special denial, require any fact to be proved by the party who relies upon it."

### Case Law.

*(General).*

1. Notwithstanding the provisions in the Code, admissions of parties and waiver of contentions at any stage of the suit at variance with the written pleadings should be recorded in the form of statements or should be noted in the Judge's own hand.

If any contention is given up at the final hearing, the Court should take a statement from the Vakil or the party to that effect or at least make a note of it in the issue paper.

Any doubt in the written statement should be cleared by the examination of the defendant or his Vakil at the time of the settlement of issues.— **5 T. L. R.,** *124.*

2. It is a well-established principle of law that the decision of a case must be in accordance with the pleadings. If, at the final hearing, the Court learns that the case stated in the pleadings is inaccurate, it must either dismiss the suit or allow the plaintiff to withdraw it, with liberty in either case to bring a fresh suit.

When a Vakil makes a statement totally inconsistent with his client's case in the pleadings, the Courts should not act upon it, unless they are certain that it was made under instructions.— **7 T. L. R.,** *33.*

Fol.—32 T. L. R., 211
(=7 T. L. J., 32).
Ref.—17 T. L. J., 146.

**3.** It is inexpedient to allow parties to go to trial on issues of fact without some distinct and specific allegation on the one side and denial on the other. Where a plaintiff seeks relief against defendant on the ground of fraud, the facts or circumstances constituting the alleged fraud must be distinctly set forth in the pleadings before the case is allowed to go to trial. Otherwise, defendants have a valid right to complain that they were taken by surprise at the trial, and they may further be seriously prejudiced by enabling the plaintiffs to bring any evidence without giving defendants full opportunity to rebut such evidence. A plaint alleging vaguely a case of fraud, without a detailed statement of the circumstances constituting such fraud, does not satisfy the requirements of law, and the Court would do well to insist upon a distinct statement of facts in the pleadings.— **7 T. L. R.,** *117.*

Ref.—38 T. L. R., 249 (=14 T. L. J., 60).

**4.** When the pleadings are silent on material points, it is the duty of the Court to have the defects in the written pleadings cured by returning the same for amendment, or by an oral examination of the party or his Vakil at the first hearing.— **9 T. L. R.,** *153.*

**5.** When there is a doubt as to the nature of the plaint, the Court should take a statement from the plaintiff or his Vakil regarding the real nature of the suit before raising issues.— **17 T. L. R.,** *89.*

**6.** Fraud and misrepresentation being serious allegations charged against the person sought to be made liable must be positively proved.— **21 T. L. R.,** *256.*

**7.** Vague allegations of fraud are useless. "With regard to fraud, if there be any principle which is perfectly well settled, it is that general allegations, however strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud, of which any Court ought to take notice."— **22 T. L. R.,** *143.*

Ref.—16 T. L. J., 550.

**8.** The Legislature has expressly clothed the Courts with the power to strike off pleadings which are prolix. They have also inherent power to strike out or expunge scandalous and irrelevant remarks contained in pleadings, and the power of preventing abuse of their process, to forbid scandalous questions and such questions as are intended to annoy.— **2 T. L. J.,** *332.*

**9.** Where an admission or a statement is made by a Vakil, which is totally inconsistent with his client's case in the pleadings, the Courts should not act upon it unless they are certain that such admission or statement has been made under instructions.— **32 T. L. R.,** *211* (= **7. T. L. J.,** *32*).

**10.** When a Court accepts a new case set up, which is inconsistent with the pleadings, the Court acts irregularly. "It is impossible to conclude parties by inferences of fact which are not only not consistent with the allegations that are to be found in the plaint which constitutes the case the defendant has to meet, but which are in reality contradictory of the case made by the plaintiff. It will introduce the greatest amount of uncertainty into judicial proceedings if the final determination of causes is to be founded upon inferences at variance with the case that the plaintiff has pleaded and by joining issue in the cause has undertaken to prove."— **13 T. L. J.,** *409.*

Rel.—18 T. L. J., 449.

Ref.—16 T. L. J., 253.

**11.** The view expressed in 7 T. L. R., 18 that written statements must be taken as public documents and presumed as such to be genuine, *i. e.*, actually signed by the parties by whom they purport to be signed, has not been followed in subsequent cases. The position taken therein cannot be accepted as correct. Such a presumption may no doubt be legitimately drawn with reference to what are really public documents, *i. e.*, records prepared by any public office in the course of its public business. But the pleadings stand on a different footing. They are

prepared and signed out of Court and filed only subsequently in Court. To regard them as public documents and presume their genuineness on that basis would open a wide door to fraud. For instance, it is conceivable that a written statement containing important admissions, a confession of judgment, a compromise petition, a petition certifying satisfaction of decree and so on, which cannot be distinguished on principle from pleadings, may be filed purporting to be signed by persons who have not really signed them. To presume them to be genuine and act upon them and put the burden of proving that they are not genuine upon persons who dispute them, it may be long after they had been filed and after the originals thereof had been destroyed, must lead to considerable hardship in practice. "That class of documents which consists of plaints, written statements, affidavits and petitions filed in Court cannot be said to form such acts or records of acts as are mentioned in the Section (Law of evidence) and are, therefore, not public documents." **14 T. L. J.,** ***138.***

Ref.—16 T. L. J., 277.

**12.** It is an important rule of construction as regards pleadings that, unlike the testimony of witnesses, they should not be dissected, and must, if made subject to a condition, be either accepted subject to such condition, or not at all.— **14 T. L. J.,** ***287.***

**13.** The object of pleading is mainly to give the other party notice of the matter pleaded ; and when that object is attained, the mere omission of the plaintiff to raise the plea in question in formal terms ought not to stand in the way of his being allowed to rely upon that plea.—**42 T. L. R.,** ***1*** (**=15 T. L. J.,** ***248***).

Ref. —17 T. L. J., 857.

**14.** The general rule to be followed is that the plaintiff must fail in his suit if he cannot show that, at the date of the plaint, he had a cause of action. It is not enough that, during the course of the action, circumstances have so changed as to give rise to a cause of action. The rule is that a decree must have reference to the state of things existing at the date of the plaint, and where at that date the plaintiff had no cause of action, no relief could be given to him. One apparent exception is that the Court may take notice of events which have happened since the institution of the suit and afford relief to the parties on the basis of the altered conditions where it is shown that the original relief claimed has, by reason of subsequent change of circumstances, become inappropriate or that it is necessary to base the decision of the Court on the altered circumstances in order to shorten litigation or to do complete justice between the parties.— **42 T. L. R.,** ***128*** (**=15 T. L. J.,** ***326***).

Fol.—18 T. L. J., 640.
Ref.—43 T. L. R., 344 (= 17 T. L. J., 161).

**15.** The whole object of pleading is that the parties and the Court should know what is the real point to be discussed and decided.— **15 T. L. J.,** ***440.***

**16.** It is a well recognised rule in the law of pleadings that a party should state his whole case and that he should plead all facts on which he intends to rely, as otherwise, he could not strictly give any evidence of them at the trial. To allow a party to develop his case at every stage and base his claim on facts not specifically stated in the pleadings would be virtually embarrassing his opponent as the latter has a right in law to be told definitely the case which he is called upon to answer.— **18 T. L. J.,** ***301.***

**17.** The disposal of a suit on a case not raised by the parties and to which the evidence had not been directed would be a substantial error and defect of procedure. Even when a new argument contradictory to the case originally set up and involving a line of attack that the other side had not

Pleading to state material facts and not evidence.

2. Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums and numbers shall be expressed in figures.

---

the opportunity to meet, is advanced, the Courts would not accept the same.— **18 T. L. J.,** ***449.***

**18.** It is a cardinal rule of pleadings that material facts should be stated therein with certainty. The object of the pleadings is to enable the Court to ascertain with precision what is the question at issue between the parties. The rule should be that they must be particularly sufficient to appraise the Court and the other party of the exact nature of the question to be tried. All the material facts have to be expressly pleaded, *i. e.,* facts which have to be proved at the trial before the party can succeed in his claim or defence. Of course, it is not necessary to state the evidence by which the facts are proved, but the *facta probandi* (facts to be proved), as distinguished from the *facta probantia* (the evidence which proves such facts), have to be set out in such pleadings.— **44 T. L. R.,** ***32*** **(=18 T. L. J.,** ***471*****).**

---

**Or. VI, r. 1** [ = „ = *Or. VI, r. 1* ]

I. "Pleadings are the written statements by each party to an action of the case on which the party relies, which are delivered by the parties to each other, and are delivered also to the Court which is to try the action. They form part of the 'record' of the action: their object is, first, to enable each party to the action to know definitely what case (claim or defence, as the case may be) he has to meet, and what facts he must be prepared to prove; and secondly, to inform the Court what the matters are which are in dispute, and on which judgment is to be given. Subject to the wide powers of the Court to permit amendments, parties are bound by the statements made in their respective pleadings, and cannot, at the trial of the action, go outside them."—*Yearly Practice for 1925*.

II. Section 100 of the Supreme Court of Judicature Act, 1873, defines "Pleading" as follows :—

"'Pleading' shall include any petition or summons, and also the statements in writing of the claim or demand of any plaintiff and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant."

III. "The whole object of pleadings is to bring the parties to an issue, and the meaning of the Rules was to prevent the issue being enlarged, which would prevent either party from knowing, when the case came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to definite issues, and thereby to diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing."— (*Throp V. Holdsworth*).

---

**Or. VI, r. 2** [= „ = *Or. VI, r. 2* = En. Or. 19, r. 4]

I. The Courts should see that pleadings are not unnecessarily prolix or in argumentative form. The causes of action and the matters of defence should be stated as concisely as possible.— **1 T. L. R.,** ***48.***

II. Rule 4 of Order XIX of the Rules of the Supreme Court, 1883 is as follows :—

3. The Forms in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings.

Forms of pleading.

"4. Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums, and numbers shall be expressed in figures and not in words. Signature of counsel shall not be necessary; but where pleadings have been settled by counsel or a special pleader they shall be signed by him; and if not so settled they shall be signed by the solicitor, or by the party if he sues or defends in person."

**Case Law.**

**1.** The rule in redemption suits is that when the mortgagee pleads that he has made improvements, it is incumbent on the plaintiff mortgagor to specifically state in his pleadings that the improvements are improper.— **17 T. L. J.,** *688.*

**2.** It is absolutely essential that the pleading not to be embarrassing to the defendants, should state those facts which will put the defendants on their guard, and tell them what they have to do.

The object of pleading is merely to give the other party, notice of the matter pleaded, and if that object has been attained, the mere omission of the plaintiff to raise the plea in formal terms ought not to stand in the way of his being allowed to rely upon that plea.

"It is impossible to conclude parties by inferences of fact which are not only not consistent with the allegations that are to be found in the plaint which constitute the case the defendant has to meet, but which are in reality contradictory of the case made by the plaintiff. It will introduce the greatest amount of uncertainty into judicial proceedings if the final determination of causes is to be founded upon inferences at variance with the case that the plaintiff has pleaded and by joining issue in the cause he has undertaken to prove.

A party who in the trial Court fails to establish the case which he set up, is not entitled to advance a new case in appeal.— **17 T. L. J.,** *887.*

**3.** It is well settled that scandalous matters should be avoided in pleadings, and any proceedings before the Courts may be objected to for scandal, and the scandalous matter ordered to be expunged. It is also well established that, if the allegations are relevant, they cannot be struck out because in other ways they are scandalous.

The expunging of such allegations may be done by the Court of its own motion.

Every pleading shall contain and contain only a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, but not the evidence by which they are proved, as laid down under Order VI, Rule 2.— **19 T. L. J.,** *372.*

---

**Or. VI, r. 3** [ = „ = *Or. VI, r. 3* = En. Or. 19, r. 5 ]

Rule 5 of Order XIX of the Rules of the Supreme Court, 1883, is as follows :—

"5. The Forms in Appendices C., D., and E., when applicable, and when they are not applicable, forms of the like character, as near as may be shall be used in all pleadings, and where such forms are applicable and sufficient any longer forms shall be deemed prolix, and the costs occasioned by such prolixity shall be disallowed to or borne by the party so using the same, as the case may be."

4. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the form aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

Particulars to be given where necessary.

5. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just.

Further and better statement or particulars.

6. Any condition precedent, the performance or occurrence of which is intended to be contested shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendent shall be implied in his pleading.

Condition precedent.

**Or. VI, r. 4** [ = ,, = *Or. VI, r. 4* = En. Or. 19, r. 6 ]

I. Rule 6 of Order XIX of the Rules of the Supreme Court, 1883, is as follows:—

"6. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading; provided that, if the particulars be of debt, expenses, or damages, and exceed three folios, the fact must be so stated, with a reference to full particulars already delivered or to be delivered with the pleading."

**Or. VI, r. 5** [ = ,, = *Or. VI, r. 5* = En. O. 19, r. 7]

I. Rule 7 of Order XIX of the Rules of the Supreme Court, 1883, is as follows:—

"7. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice or written proceeding requiring particulars may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just."

II. When absence of necessity is specifically pleaded by the junior members of a Tarwad, in cases where the documents evidencing the loan are silent as regards the purpose for which the same was contracted, it is desirable that the creditor should detail out the purposes of the loan to enable the members of the Tarwad impeaching the loan, to adduce evidence to rebut the presumption regarding necessity arising in his favour. In such cases, Courts will do well to call for supplementary written statements or replications from the creditors, setting forth the same, treating the express denial of necessity by the junior members as a demand for such details which the creditor is bound to comply with (F. B.).— **19 T. L. J., 184.**

Departure.

7. No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

Denial of contract.

8. Where a contract is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract.

---

**Or. VI, r. 6** [= „ = *Or. VI, r. 6* =En. Or. 19, r. 14]

Rule 14 of Order XIX of the Rules of the Supreme Court, 1883, is as follows :—

"14. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant (as the case may be) ; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading."

**Or. VI, r. 7** [= „ = *Or. VI, r. 7* =En. Or. 19, r. 16]

Rule 16 of Order XIX of the Rules of the Supreme Court, 1883, is as follows :—

"16. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same."

**Case Law.**

The setting up of inconsistent pleas by a defendant is not prohibited by any rule of law, especially in cases where the defendant has no personal knowledge of the facts to which the pleas relate. "There can be no objection to preferring alternative and inconsistent claims, or raising inconsistent pleas, provided they are based on facts which are not inconsistent. Even inconsistent facts are not prohibited as a matter of law, but inconsistent claims or pleas which are based on facts so inconsistent that the evidence required to prove one fact is destructive of the other fact, should be discouraged, except where the facts are not within the personal knowledge of the party pleading them.— **44 T. L. R.,** *339* (=**18 T. L. J.,** *1133*).

**Or. VI, r. 8** [= „ =*Or. VI, r. 8* = En. Or. 19, r. 20]

Rule 20 of Order XIX of the Rules of the Supreme Court, 1883, is as follows :—

"20. When a contract, promise, or agreement is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract, promise or agreement alleged, or of the matters of fact from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of such contract, promise, or agreement, whether with reference to the Statute of Frauds or otherwise."

TRIVANDRUM PUBLIC LIBR



Effect of document to be stated.

9. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

Malice, knowledge, etc.

10. Wherever it is material to allege malice, fraudulent intent ion, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

Notice.

11. Wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice, as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, are material.

Implied contract, or relation.

12. Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

---

**Or. VI, r. 9** [= „ = *Or. VI, r. 9* =En. Or. 19, r. 21]

Rule 21 of Order XIX of the Rules of the Supreme Court, 1883, is as follows :—

"21. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the document or any part thereof are material."

**Or. VI, r. 10** [= „ = *Or. VI, r. 10* =En. Or. 19, r. 22]

Rule 22 of Order XIX of the Rules of the Supreme Court, 1883, is as follows :—

"22. Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred."

**Or. VI, r. 11** [= „ = *Or. VI, r. 11* = En. Or. 19, r. 23]

Rule 23 of Order XIX of the Rules of the Supreme Court, 1883, is as follows :—

"23. Wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the

13. Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied (*e. g.*, consideration for a bill of exchange where the plaintiff sues only on the bill and not for the consideration as a substantive ground of claim).

Presumptions of law.

14. Every pleading shall be signed by the party and his pleader (if any): Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorised by him to sign the same or to sue or defend on his behalf.

Pleading to be signed.

15. (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

Verification of pleadings.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

---

precise terms of such notice, or the circumstances from which such notice is to be inferred, be material."

**Or. VI, r. 12** [ = „ = *Or. VI, r. 12* = En. Or. 19, r 24]

Rule 24 of Order XIX of the Rules of the Supreme Court, 1883, is as follows:—

"24. Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative."

**Or. VI, r. 13** [ = „ = *Or. VI, r. 13* = En. Or. 19, r. 25]

Rule 25 of Order XIX of the Rules of the Supreme Court, 1883, is as follows:—

"25. Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied: (*e. g*, consideration for a bill of exchange, where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim).

16. The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit.

Striking out pleadings.

---

Or. VI, r. 14 { =Or. VI, r. 14 ; Cf. { Ss. 47, 48 ; Ss. 110 & 111 } ; Or. VI, r. 15 =Or. VI, r. 15 }

The corresponding Sections of the old Regulation are subjoined :—

"47. *Plaints to be signed and verified.*—The plaint shall be signed by the plaintiff and his pleader (if any), and shall be verified at the foot by the plaintiff or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case :

Provided that, if the plaintiff is, by reason of absence or for other good cause, unable to sign the plaint, it may be signed by any person duly authorised by him in this behalf."

"48. *Contents of verification.*—The verification must be to the effect that the same is true to the knowledge of the person making it, except as to matters stated on information and belief, and that as to those matters he believes it to be true.

*Verification to be signed and attested.*—The verification shall be signed by the person making it."

"110. *Written statements to be signed and verified.*—Written statements shall be signed and verified in the manner hereinbefore provided for signing and verifying plaints, and no written statement shall be received unless it be so signed and verified."

"111. *Powers of Courts as to argumentative, prolix or irrelevant written statements.*—If it appears to the Court that any written statement, whether called for by the Court or spontaneously tendered, is argumentative or prolix, or contains matter irrelevant to the suit, the Court may amend it then and there, or may, by an order to be endorsed thereon, reject the same, or return it to the party by whom it was made for amendment within a time to be fixed by the Court, imposing such terms as to costs or otherwise as the Court thinks fit.

*Attestation of amendments.*—When any amendment is made under the Section, the Judge shall attest it by his signature.

*Effect of rejection.*—When a statement has been rejected under this Section, the party making it shall not present another written statement, unless it be expressly called for or allowed by the Court."

*Sec. 47* : **Case Law.**

A plaint signed by a person holding a general power of attorney authorising him to file and defend suits and to sign plaints and written statements on behalf of the plaintiff is properly signed within the meaning of Section 47, C. P. C. It will be straining the language of the Proviso to the Section to hold that the authority referred to therein should be a special authority to sign each particular plaint as it is filed.—**16 T. L. J.**, *173.*

---

**Or. VI, r. 16** [ = „ = *Or. VI r. 16* = En. Or. 19, r. 27 ]

Rule 27 of Order XIX of the Rules of the Supreme Court, 1883, is as follows :—

"27. The Court or a Judge may at any stage of the proceedings order to be struck out or amended any matter in any indorsement or pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass, or delay the fair trial of the action ; and may in any such case, if they or he shall think fit, order the costs of the

17. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Amendment of pleadings.

---

application to be paid between solicitor and client."

**Case Law.**

1. The suit was by plaintiffs, members of a Nambudiri Illom, against the Karanavan and Anandaravan of a Nair Tarwad for renewal fees, arrears of Michavarom and customary dues due on account of the renewal of 1097. In the plaint it was averred that the prior decree granted the plaintiff renewal fees for 1085 and Michavarom at the enhanced rate per annum against the defendants. In the course of the present suit, the second defendant impugned the binding nature of the former decree on the ground of its having contravened Section 25 of the Nair Regulation. The plaintiffs thereupon prayed for leave to amend the plaint by the inclusion of a prayer for getting enhanced Michavarom from 1097.

*Held.*—Under the circumstances leave to amend the plaint, as applied for by the plaintiffs, should have been granted. The case now set up could not be considered to be any new case as would materially alter or transform the nature of the suit, as originally framed. The reliefs now sought for relate to the rights that, according to the plaintiffs, would have accrued to them at the time of the renewal of 1097. In claiming these reliefs, it was perfectly open to the plaintiffs to set up contentions now attempted to be put forward as an alternative basis of their claim in the original plaint itself. For, it is a recognised principle of the law of pleadings that the plaintiff is entitled in law to rely upon several different rights alternatively though they may be inconsistent.

A suit cannot be dismissed because the plaintiff claims, in the alternative, rights which are inconsistent with each other. Such a dismissal could not be made when the plaintiff claims rights of ownership and easement over a property in the same suit. Of course, if the alternative case would prejudice, embarrass or delay a fair trial of the case the Court could direct the pleadings to be struck out. But it could not be laid down as a general rule that such prejudice or embarrassment would result in all cases in which alternative cases are set up. These rules relating to pleadings are enacted with a view to prevent multiplicity of proceedings and unless serious prejudice is caused the provisions contained in Order VI, Rule 16, relating to the striking off of the pleadings, should not be exercised. Even in the matter of inconsistent pleas, the policy of the Court should be to allow the party to set up a new plea of fact inconsistent with the facts already pleaded, unless they would be embarrassing or prejudicial, because the plaintiff should be allowed to do this at his own risk; if the pleas are contradictory they work out their own retribution by disproving each other to the extent of their contradiction and the party's knowledge of them.— **19 T. L. J.,** *170.*

2. See also under next Rule.

**Or. VI, r. 17** [*Cf.* Ss. 49 & 111
= *Or. VI, r. 17*
= En. Or. 28, r. 1]

I. Section 49 of Regulation II of 1065 was as follows :—

"49. ***When plaint may be rejected, returned for amendment, or amended.***—The plaint may, at the discretion of the Court,

(a) at, or any time before, the settlement of issues, be rejected, if it does not disclose a cause of action;

(b) at, or any time before, the settlement of issues, be returned for amendment within a time to be fixed by the Court, and upon such terms as to the payment of costs occasioned by such amendment, as the Court thinks fit, if it—

(i) is not signed and verified as hereinbefore required,

(ii) does not state correctly and without prolixity the several particulars hereinbefore required, or contains particulars other than those so required,

(iii) is wrongly framed by reason of non-joinder or mis-joinder of parties, or joins causes of action which ought not to be joined in the same suit, or

(iv) is not framed in accordance with the provisions of Section 38;

(c) at any time before judgment, be amended by the Court upon such terms as to the payment of costs as the Court thinks fit:

Provided that a plaint shall not be amended either by the party to whom it is returned for amendment, or by the Court, so as to convert a suit of one character into a suit of another and inconsistent character.

When a plaint is amended under this Section, the amendment shall be attested by the signature of the Judge and of the plaintiff or his Vakil."

II. For Section 111 of Regulation II of 1065, see under Rule 15 *Supra*.

III. See also Section 117.

IV. For the different kinds of amendment, see Sections 116 and 117, Order I, Rule 10 (2), and Order VI, Rules 16 and 17.

V. Rule 1 of Order XXVIII of the Rules of the Supreme Court, 1883, is as follows:—

"1. The Court or a Judge may, at any stage of the proceedings, allow either party to alter or amend his indorsement or pleadings, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties."

VI. "Section 49 of the Civil Procedure Code of 1065 allowed amendments to be made by the Courts upon such terms as to the payment of costs as the Courts thought fit, such amendments not being allowed to be made either when returned for the purposes indicated in Clause (b), or directed to be made under Clause (c), so as to convert a suit of one character into that of another and inconsistent character. The provisions relating to amendments in the later Code of 1100 appear to be wider and more comprehensive. Section 117 of the Code (corresponding to Section 153 of the British Indian Act V of 1908) lays down that all necessary amendments should be made for the purpose of determining the real question or issue raised by or depending on a proceeding in a suit. Order 6, Rule 17 of the Code of 1100 similarly enables the Court at any stage of the proceedings to allow either party to alter or amend his pleadings in such manner and in such terms as may be just, and lays down that all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. This Rule evidently also embodies the provisions relating to the amendment of written statements contained in Section 111 of the Code of 1065. One of the innovations introduced under the new Code in this matter is the omission of the provision in Clause (b) of Section 49 of the old Code enabling the return of the plaint for amendment at or before the first hearing of the suit in the several classes of cases set forth therein. While the pleadings unsigned, unverified, or not drawn up in the form required by the Code, dealt with under Clause (b) (ii) and (iii) of the above Section

in the old Code, are required to be dealt with under the general provisions relating to amendment under the new Code, prolix, unnecessary and scandalous statements and those likely to prejudice and embarrass the other side, dealt with under Clause (b) (ii) of the old Code, have been directed to be struck out or called for being amended as the case may be by the Court under Rule 16 of Order VI of the new Code. Defects relating to mis-joinder and non-joinder of parties (Clause (b) (iv) of Section 49 of the Code of 1065) have similarly to be rectified by invoking the general rule relating to amendments in Section 113 and Order VI, Rule 17, and the provisions relating to joinder of parties contained in Order I of the new Code. It may be noticed here that the amendments in the above cases are allowed to be applied for and made at *any stage of the suit* under the new Code, the same to be effected without an actual return of the plaint. Another seeming innovation introduced by the new Code on this subject is the omission of the express provision prohibiting amendments that would tend to alter the character of the suit. This omission cannot be said to have changed the law to any appreciable extent, as the wording of the new Code seems to have only amplified and clearly explained what exactly was meant by the expression 'character of the suit' occurring in the old Code."— **43 T. L. R.,** *344* (=**17 T. L. J.,** *161*).

### Case Law.

**1.** Whenever a plaint is rejected, a judicial order is to be recorded in the diary of the Court and the original plaint is also to be placed among the records, but not to be numbered or entered in the register.

Whenever a plaint is returned, the grounds and date of return are to be entered on the back of such plaint, and signed by the Judge, a copy of such endorsement being placed on record.

Where a plaint is returned for amendment the order of return should specify a time for such amendment.—**I T. L. R.,** *48*.

**2.** An order granting an application by plaintiff to amend his plaint is not appealable under Section 557 (old Code), as Clause (6) of that Section refers to a plaintiff aggrieved by the order and not to a defendant.

A Court is competent to grant an application made under Section 49, Clause (c), allowing an amendment of the plaint to be made at any time before judgment, provided that the character of the suit, as originally framed, is not altered by such amendment.— **13 T. L. R. App.,** *13*.

**3.** Erroneous statement in a plaint as to the mode of acquisition of property, but which has been subsequently corrected before trial, is not a ground for disallowing the claim when there is ample evidence, oral and documentary, in support of such claim.— **13 T. L. R.,** *5*.

**4.** A sued B for redemption of property No. 1 alleged to have been mortgaged to B's ancestor. B denied the mortgage of that property but admitted that property No. 2 was mortgaged to his family by A's Tarwad. The Munsiff, finding that A's case regarding property No. 1 was weak, suggested to his Vakil to withdraw the suit and institute a fresh suit for No. 2. A declined to adopt the suggestion or even ask for an amendment of the plaint. The Munsiff dismissed his suit. On appeal by A, the District Judge, reversing the Munsiff's decree, remanded the case to dispose of it in due course, after allowing A to amend the plaint.

*Held.*—The Judge's procedure was wrong and would, if allowed to stand, be tantamount to permitting him to make out a case for plaintiff not set forth in the pleadings.

The Court should not assist a plaintiff who has persisted in inviting a decree on a precisely worded plaint, as the plaintiff, in the case, had done.— **14 T. L. R. App.,** *35*.

5. In a suit for cancellation of Pattah, there was no express prayer in the plaint for declaration of title ; but the allegation in the issue paper disclosed an issue as to title. The appellant, therefore, prayed for an amendment of the plaint.

*Held.*—In a case like this, the amendment of the plaint by adding a prayer for declaration could not be allowed.

The defect in the statement of the plaintiff's case in the plaint was however merely formal, and as all the questions as to title and possession had been raised and tried, it would be improper to send the parties to another suit for the trial of the same questions over again. The special appellant's prayer for declaration of title was therefore granted. The lower Court's decree was reversed and the suit remanded for re-trial on the plaint amended as above stated.—

**17 T. L. R.,** *8.*

Dist.—2 S. D., 274.

6. Where the Courts compel a plaintiff to pay additional court fees after ascertaining the real object and additional reliefs implied in a plaint, they should have the plaint amended appropriately.—

**21 T. L. R.,** *1.*

Ref.—22 T. L. R., 270.
24 T. L. R., 37.
Ex.—K. P., 220.

7. Suit by a partner for recovery of money due on settlement of accounts. The lower Courts concurrently found that there was no settlement of accounts, and dismissed the suit. On special appeal, the High Court, while ordering the amendment of plaint for recovery of money into one for accounts and remanding the case under Section 533, Civil Procedure Code [Or. XL, r. 22] :

*Held.*—A suit for recovery of money due under a settlement of accounts might be amended into a suit for accounts as the relief arose out of and was immediately connected with the same transaction, and such an amendment did not alter the character of the suit. "The intention of the Legislature was that, as far as possible, all matters in dispute between the parties relating to the same transaction should be disposed of in the same suit." In the case, the facts as to partnership dissolution, &c., are all admitted and alternative cases or reliefs 'which arise out of' and are 'immediately connected with the same transaction' can be allowed to be raised and prayed for any amendment as the suit, considered in whatever way, will remain substantially a suit for recovery of money due by one partner to another in a partnership transaction which has come to an end.—

**24 T. L. R.,** *95.*

Ref.—14 T. L. J., 543.

8. Where a plaintiff wanted to withdraw a portion of his suit on account of his inability to pay the whole court fees on the value of the plaint properties, as subsequently found by the commissioner deputed for the purpose, and the cause of action of the withdrawn portion was different from the rest of the plaint, the plaintiff might be allowed to amend his plaint as prayed for under the wide powers conferred upon Courts under Section 49, Clause (*c*).

**1 S. D.,** *309.*

9. When a Jenmi brings a suit for redemption while the properties were in fact demised on Kanom, the plaintiff cannot be allowed to amend his plaint by asking for a renewal as the suit for redemption is obviously different in character from a suit for renewal.

Para 1 of Section 44 purports to convey permanent occupancy. Para 2 says that the Jenmi and Kudiyan Regulation shall not apply to any right acquired by Kudiyans or Jenmis at the date that Regulation came into force and the first para saves the rights of Kudiyans who have had 50 years' possession of the holding without in any manner acknowledging the Jenmi's title.—

**2 S. D.,** *81.*

**10.** The plaintiff brought the suit for recovery of possession of property as if it was one against a lessee and a person claiming under the lessee. He added the separate cause of action based on title only by his petition for amendment presented more than 12 years after the sale to him of the plaint property.

*Held.*—(1) If the subsequent amendment did not change or add to the cause or causes of action on which the suit was originally brought, the amendment could not alter the date of the filing of the suit. But when a distinct cause of action, was added at a late stage, the suit for amendment became really two suits rolled into one, the first suit on the original cause of action being supplemented by a second suit on the new cause of action though the different suits are for convenience and brevity of description treated as one suit.

(2) The plaintiff cannot be in a better position than if his suit on his cause of action as landlord had been dismissed and he had brought a fresh suit on title on date of amendment (which was 12 years after the sale to him) and hence the suit was barred.— **3 S. D.,** *218.*

**11.** Though an appeal is provided for from orders returning plaints for amendment, an order refusing permission to amend a plaint, which is of an interlocutory nature is not appealable under the Code.

The appeal could not be treated as an application for revision. The High Court does not exercise its revisional jurisdiction so long as there is any other remedy open to the applicant. The additional relief with respect to the damages claimed by the plaintiff is such as could be obtained by a separate suit.— **4 S. D.,** *87.*

**12.** Where the Munsiff holding that the plaint was bad by reason of mis-joinder of parties and causes of action and giving 7 days' time for presenting two plaints, ordered the plaint to be struck off and then the Zillah Judge dismissed the C. M. Appeal presented against the above order of the Munsiff on the ground that the appeal ought to have been styled and stamped as a regular appeal:

*Held* (remanding the case to the Zillah Judge for disposal).—The Munsiff's order could be treated as one passed under Section 49, C. P. C., for amendment. Against such an order Section 557, clause (6), provides an appeal and the Zillah Judge, even if the appeal before him should be treated as a regular one, ought not to have dismissed it on that highly technical ground.

*Obiter*—Even where a plaint discloses no cause of action, it can be amended instead of being rejected. [See C P. C., Section 49 Clause (c)].— **K. P.,** *257.*

**13.** In a mortgage suit, the mortgagee was allowed to amend his plaint by adding a prayer to recover the value of improvements effected by his sub-mortgagee. The plaintiff should have sued also for the improvements due to his sub-mortgagee, for the mortgagor ought to be protected from harassment by separate suits brought by his mortgagee and the mortgagee's derivative mortgagee.— **K. P.,** *475.*

**14.** Where the relief prayed for is a minor one and may be included in the general prayer for other relief contained in the plaint, the prayer for amendment of the plaint in respect of the minor relief may be granted, as it does not change the suit into one of an *inconsistent* character.— **K. P.,** *496.*

**15.** The Court has ample powers to allow amendments even when the first mistake is due to negligence or carelessness. The defendant ought not to be prejudiced by the amendment.— **27 T. L. R.,** *192.*

**16.** The plaintiff, a Makkathayam Hindu, alleging that his wife, a girl of 13 years of age, was being wrongfully kept back from him by defendant, her grandmother, sued

for recovery of the wife. The District Judge being of opinion that without impleading the wife as a party defendant, an effective decree could not be passed, directed amendment of the plaint on impleading her. It was contended by the defendant in appeal that the addition of the wife as a party altered the nature of the suit and that as the order for amendment was made after the examination of some witnesses, it was irregular.

*Held.*—(1) The plaint in effect was one asking for a direction being made for the wife's joining her husband, the defendant who obstructs such return being enjoined to refrain from opposing it. For the granting of that relief the wife should be a party to the suit and such amendment did not materially alter the nature of the suit.

(2) Courts are to act with considerable liberality in the matter of granting amendments and ought to correct all kinds of errors or mistakes which are not fraudulent or intended to over-reach the Court.—
**28 T. L. R.,** ***1.***

Ref.—14 T. L. J., 543.
16 T. L. J., 517.

***17.** A defect in the signature of a plaint may be cured by amendment at any stage of the suit.— **32 T. L. R.,** ***190*** **(=6 T. L. J.,** ***305*****).**

**18.** Plaintiffs entitled to a moiety of the self-acquisitions of their father who died on 4-8-1074, sued on 3-8-1086, to recover one-half of 6 out of 10 items of properties belonging to the deceased. On 2-2-1038, an application was made for amendment of the plaint by including in the plaint schedule four items of property omitted in the first instance owing to *bona fide* ignorance, and was granted. The amended plaint was put in on 21-4-1088, when it was found that the value of the suit was beyond the pecuniary jurisdiction of the Munsiff, and the Munsiff on the same day ordered the plaint to be presented to the proper Court. The plaint was however actually returned to the plaintiffs only on 25-5-1088 and was presented before the District Court on 27-5-1088. The defence contended *inter alia* that the amendment was improperly allowed inasmuch as on the date of the application for amendment, the period of limitation of the suit had expired and that the period between the date of order for return of the plaint for presentation to the proper Court and the date of actual return thereof, should not be given credit to the plaintiffs to save limitation.

***Held.***—(1) So long as the cause of action had remained unaltered and the defendants had not been prejudiced by the amendment, there was nothing illegal or improper in allowing the plaint to be amended even after the expiry of the period of limitation; and where a plaint has been properly amended, the date of institution of the claim is the date of presentation of the original, and not of the amended plaint.

"The Court being desirous of getting at the true facts will allow an amendment subject to three general conditions: *Bona fides* on the part of the applicant: possibility of amendment without such prejudice to the other party as cannot be compensated by costs (such as prejudice to rights accrued) and subject to this that the amendment is not such as to turn a suit of one character into a suit of another character. This statement is not made as being exhaustive but as embodying what are perhaps the three chief conditions on which amendment may be allowed * * In short the object of a trial being to get at the rights of the parties, any amendment which may be required for that purpose should, subject to well-known general principles governing this matter, be allowed. It has been held that apart from the question of limitation, it is unjust to a plaintiff to put him to the great expense of a new suit when a reasonable amendment, not inconsistent with his case as it originally stood, might equally well answer his purpose as the new suit." (45 Cal., 305).

(2) As the delay in returning the plaint was the delay of the Court, the plaintiffs

were entitled to be given credit for the time between the date of the order for return of the plaint and the date of the actual return thereof. Section 53, C. P. C., [Or. VII, r. 10] contemplates that the order for the return of the plaint and the actual return of the plaint must be made on the same date, and this shows that unless the Court was prepared to deliver out the plaint immediately the order for its return was made—in the case on 21-4-1088—the Court was not justified in dating its order for the return of the plaint on 21-4-1088.— **34 T. L. R.**, *298.*

Ref.—14 T. L. J., 543.
16 T. L. J., 517.
43 T. L. R., 344
(= 17 T. L. J., 161).

**19.** Though a suit as framed was unsustainable on the ground that the plaint did not contain a prayer for consequential relief, the plaintiff could in appeal be allowed to amend the plaint by the addition of a prayer for injunction, inasmuch as the amendment was a mere matter of form not affecting the merits of the claim or transforming the nature of the suit.— **7 T. L. J.**, *390.*

Ref.—43 T. L. R., 344
(= 17 T. L. J., 161).

**20.** Where a Court being of opinion that the allegation of fraud in a plaint was not specific and circumstantial, dismissed the suit :

*Held.*—The dismissal was not the proper mode of disposal of the suit ; but the Court should have either allowed or ordered an amendment or rejected the plaint.

"With regard to fraud, if there be any principle which is perfectly well settled, it is that general allegations, however strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any Court ought to take notice. There can be no objection to the use of such general words as 'fraud' or 'collusion', but they are quite ineffectual to give a fraudulent color to the particular statements of the fact in the plaint, unless these statements, taken by themselves, are such as to imply that a fraud has actually been committed.........If the Judge did not allow an amendment, he ought to have rejected the plaint. That would have enabled the plaintiff to present a fresh plaint in respect of the same cause of action if he found himself in a position at any future time to make averments which would give relevancy to his action."— **35 T. L. R.**, *32.*

**21.** After the passing of an *ex parte* decree in a suit for declaration of title to and possession of plaint property, the defendant entered on the property and the suit was reopened at his instance. The plaintiff then sought to amend his plaint by inserting therein a prayer for recovery of possession which was refused:—

*Held.*—The amendment prayed for should have been granted.

No appeal lay against an order refusing the amendment.— **36 T. L. R.**, *118*
(=**10 T. L. J.**, *246*).

**22.** An amendment setting up a claim which a party has precluded himself from insisting on, will not be allowed (F. B.)— **11 T. L. J.**, *1.*

**23.** When the Court is convinced that it will be only promoting justice by allowing the prayer for amendment made by the plaintiff, the application will be allowed.— **37 T. L R.**, *186*
(= **11 T. L. J.**, *213*).

**24.** The plaintiffs and the defendant formed a trading firm. The plaintiffs brought the suit on behalf of the firm to recover from the defendant the value of some paddy alleged to have been lent to the defendant by the firm. The defendant denied receipt of the paddy. The primary Court allowed the suit. On appeal to the District Court, the defendant contended for the first time that the suit as framed was not maintainable, as the plaintiff's remedy

was for a general account in respect of the partnership. The District Court accepted the contention and, in reversal of the decree of the primary Court, remanded the suit for trial and decision *de novo* after getting the plaint amended as one for partnership accounts. Against this order the defendant appealed to the High Court.

The High Court (while upholding the order of the District Court):

*Held.*—The provisions as to amendment are those given in Section 49 of the Code of the Civil Procedure: and the limit provided there is that a plaint shall not be so amended as to convert a suit of one character into a suit of another and inconsistent character: but within the limit thus laid down any amendment should be allowed, unless the party applying is acting *mala fide* or his blunder has done some injury to his opponent which cannot be compensated for by costs or otherwise.

"All rules of Court are nothing but provisions intended to secure the proper administration of Justice, and it is, therefore, essential that they should be made to serve, and be subordinate to, that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised: but none the less no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit."

"It is a well-established principle that the object of Courts is to decide the rights of the parties and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their right.........I know of no kind of error or mistake which if not fraudulent or intended to overreach, a Court ought not to correct, if it can be done without injustice to the other party. The Courts do not exist for the sake of discipline but for the sake of deciding matters in controversy, and I do not regard such amendments as a matter of favour or grace.......... It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected, if it can be done without injustice, as anything else in a case is a matter of right."

From these statements, two propositions may be deduced, *viz.*, (1) an amendment should be allowed if it will not prejudice the other party in some way that cannot be compensated for by costs or otherwise: and (2) if the amendment will put the other side into such a position that it must be injured, or cannot get justice done, it ought not to be allowed. These afford the limit to the Court's discretion which is of necessity controlled by the condition laid down in the Section that the result of the amendment should not be to convert a suit of one character into a suit of another and inconsistent character.— **11 T. L. J.,** ***381.***

Ref.—43 T. L. R., 344
(= 17 T. L. J., 161).

**25.** Assuming that the plea of limitation is open to the defendant, it is not an inflexible rule that an amendment of the plaint should not be allowed which would deprive him of that plea. Peculiar circumstances may take a case out of the ordinary rule. Amendments have been allowed in such cases on the ground that if the plaintiff were left to bring a separate suit, it might be met by a plea of limitation, which was considered inequitable, under the circumstances. It cannot be said that the relief sought to be inserted in the plaint by the amendment alters the character of the suit or relates to a question which is foreign to the nature of the suit as originally framed. On the other hand, it relates to a question that is intimately connected with the relief claimed by the plaintiff, and is actually one that should be considered by the Court in determining whether the plaintiff is entitled to the relief claimed by him. The amendment, therefore, is necessary for the satisfactory disposal of the suit. The mere fact

that the plaintiff omitted to pray for a specific relief as regards the assignment (of the hypothecation bond) impugned by the plaintiff as fraudulent and invalid is not a sufficient reason for refusing the amendment prayed for.

The Courts are to act with liberality in the matter of granting amendments and ought to correct all kinds of errors and mistakes which are not fraudulent or intended to overreach.— **14 T. L. J.,** *313.*

Ref.—16 T. L. J., 517.
43 T. L. R., 344
(= 17 T. L. J., 161).

**26.** Courts show considerable liberality in the matter of granting amendment of plaint to correct errors, mistakes, etc., which are not fraudulent.

The proviso to Section 49, C. P. C. imposes the only limitation to the power of the Court to grant amendment and that is that a suit of one character should not be altered into a suit of another and inconsistent character. Power is given to Courts to grant amendments so that the real controversy between the parties may be tried and ultimately justice may be done and to avoid multiplicity of suits.

Amendments have been allowed where a fresh suit on the date of amendment would otherwise be time-barred.—**14 T. L. J.,** *543.*

Ref.—16 T. L. J., 517.
17 T. L. J., 125.
43 T. L. R., 344
(= 17 T. L. J., 161).
Fol.—19 T. L. J., 170.

**27.** It is settled law that the Courts should be liberal in the matter of granting amendments of plaint provided such amendments are not fraudulent or would cause serious prejudice to the opposite party which could not be sufficiently compensated by costs, and provided also that the character of the suit is not altered by the amendment. Subject to the above limitations amendments should be freely granted, as the Courts sit to decide the real controversy between the parties, and as the policy of the law is to avoid multiplicity of suits.

There is no authority for the position that, under no circumstances can a plaintiff be allowed to take advantage of an acknowledgment not specifically set up in the plaint; much less for the position that a plaintiff could under no circumstances be allowed to amend his plaint so as to claim the benefit of a ground of exemption from limitation bar which has not been set up in the plaint as originally filed.— **16 T. L. J,** *517.*

**28.** Plaintiff sued for declaration of his title to and possession of the plaint property and for a perpetual injunction restraining defendants from entering upon the same and interfering with his peaceful enjoyment thereof and also for certain other reliefs. During the course of the suit, he prayed for an amendment of the plaint by the inclusion of a prayer for eviction on the basis of a trespass of 6-1-1099, *i. e.*, after the date of suit.

*Held.*—The order refusing the leave to amend cannot be upheld. The inclusion of an additional prayer for recovery of possession contained in the application for the leave to amend would remove the defect in the form of the plaint based upon the absence of a consequential relief, on the strength of which the Judge below nonsuited the plaintiff in the case.

The following rules can be taken to correctly and exhaustively lay down the considerations that should weigh in dealing with applications for amendment :—

(1) Where the original omission is due to negligence, carelessness or accidental error, amendments of pleadings will always be allowed, unless allowing the amendment will place the other party at a disadvantage for which he cannot be adequately compensated by costs.

(2) Amendment should not be allowed when a claim or relief was deliberately omitted.

18. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.

Failure to amend after order.

(3) An amendment of pleadings must be allowed where it is necessary for the purpose of determining the real questions in controversy between the parties.

(4) Amendment should be refused where the application for amendment is not made in good faith, and the application is made at such a late stage of the case that, if granted, the plaintiff may be injured, because the defendant would without notice raise a totally different and inconsistent case which the plaintiff has not sufficient opportunity to meet.

(5) An amendment should be refused where it is such as will materially alter or transform the nature of the suit.

(6) Leave to amend pleadings should be refused where the amendment is merely technical or is immaterial.

Events subsequent to the filing of suits could be taken into account by Courts in appropriate cases in granting reliefs claimed in suits before them. In exceptional cases, a Court could, in exercise of its inherent jurisdiction, afford relief on the basis of altered conditions after suit. The power of the Court to grant the reliefs rendered necessary by reason of the altered conditions after suit, to make the same appropriate and effective and to shorten litigation has been recognised (42 T. L. R., 128). Ordinarily such reliefs should not be granted to a plaintiff who had no cause of action at date of suit. But the same could however be allowed in very exceptional circumstances. In the peculiar nature of the present action, an adjudication on the claim to the above relief has to be considered necessary for the avoidance of multiplicity of suits, and the application has therefore to be treated as deserving exceptional treatment.

Even accepting for argument's sake that the prayer for a permanent injunction claimed by way of consequential relief in the plaint as originally framed was incompetent, and the suit in the form in which it was originally presented was bad, the rejection of the application for amendment could not be supported as proper. The Judge ought to have exercised the discretion allowed him in law and granted the amendment prayed for by the plaintiff. Amendment is a mere matter of form, which could not affect the merits, or transform the nature of a suit. Even if the plaintiff had been guilty of laches, he could have been only mulcted with costs, and not punished by a refusal to grant the leave applied for by him. If the leave to amend is otherwise permissible, the defect in the form of the plaint as originally presented could not warrant the refusal of such leave. The fact that the trespass occurred long after the filing of the suit clearly showed that the plaintiff was not guilty of any laches in making the prayer.—**43 T. L. R.,** ***344*** (**= 17 T. L. J.,** ***161***).

Fol.—19 T. L. J., 170.

**29.** See also—

Sec. 89.—**17 T. L. J.,** ***125.***

---

**Or. VI, r. 18** [= S. 50 (*d*)
= *Or. VI, r. 18*
= En. Or. 28, r. 7]

I. **1.** Section 50 (*d*) of Regulation II of 1065 was as follows:—"50. The plaint shall be rejected in the following cases:—

* * *

## ORDER VII.

### Plaint.

Particulars to be contained in plaint.

1. The plaint shall contain the following particulars :—

(a) the name of the Court in which the suit is brought;

(b) the name, description and place of residence of the plaintiff;

(c) the name, description and place of residence of the defendant, so far as they can be ascertained;

(d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;

(e) the facts constituting the cause of action and when it arose;

(f) the facts showing that the Court has jurisdiction;

(g) the relief which the plaintiff claims;

(h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and

(i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits.

---

(d) If the plaint, having been returned for amendment within a time fixed by the Court, is not amended within such time."

2. The whole Section (50) is given under Order VII, Rule 11.

II. Rule 7 of Order XXVIII of the Rules of the Supreme Court, 1883, is as follows:— "7. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such fourteen days, as the case may be, become *ipso facto* void, unless the time is extended by the Court or a Judge."

---

Or. VII, r. 1 [= S. 46, Para 1
= *Or. VII, r. 1*]

I. Section 46 of Regulation II of 1065 is spread over several Rules in this Order. The Section as a whole is given below, and references to Paras thereof are made under the corresponding Rules.

"46. ***Particulars to be contained in plaint.***—The plaint must contain the following particulars:—

(a) the name of the Court in which the suit is brought;

(b) the name, description and place of residence of the plaintiff;

(c) the name, description and place of residence of the defendant so far as they can be ascertained;

(d) a plain and concise statement of the circumstances constituting the cause of action, and where and when it arose;

(e) a demand of the relief which the plaintiff claims; and

(f) if the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished.

*In money suits.*—If the plaintiff seeks the recovery of money, the plaint must state the precise amount, so far as the case admits.

In a suit for mesne profits, and in a suit for the amount which will be found due to the plaintiff on taking unsettled accounts between him and the defendant, the plaint need only state approximately the amount sued for.

*Where plaintiff sues as representative.*—When the plaintiff sues in a representative character, the plaint should show not only that he has an actual existing interest in the subject-matter but that he has taken steps necessary to enable him to institute a suit concerning it.

*Illustration.*

A sues as B's executor. The plaint must state that A has proved B's will.

*Defendant's interest and liability to be shown.*—The plaint must show that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

*Illustration.*

A dies, leaving B his executor, C his legatee, and D a debtor to A's estate. C sues D to compel him to pay his debt in satisfaction of C's legacy. The plaint must show that B has causelessly refused to sue D, or that B and D have colluded for the purpose of defrauding C, or other such circumstances rendering D liable to C.

*Grounds of exemption from limitation law.*—If the cause of action arose beyond the period ordinarily allowed by any law for instituting the suit, the plaint must show the ground upon which exemption from such law is claimed.

II. Rule 1 of Order VII corresponds to the first Para of the above Section. Clauses (d), (f) and (i) are new.

### Case Law.

1. A civil suit is not a proper remedy for an intended criminal offence. When a man who says he has the title also alleges that he is in possession of all his rights, he is not entitled to sue for a declaration. The defendant's denial of plaintiff's right, in his written statement could not justify the suit which must be founded on a cause of action that had accrued prior to date of suit.— **9 T. L. R., 33.**

Dist.—12 T. L. R., 113.
Ref.—1 T. L. J., 92.
Fol.—2 S. D., 230.

2. Several items of damages claimed in the plaint are the income which the plaintiff would have received within the year preceding the plaint, had no wrongful attachment and seizure of property taken place. But they furnish no fresh cause of action.— **9 T. L. R., 135.**

3. Particulars of fraud must be alleged in the plaint. Vague allegations are not enough.— **2 S. D., 165.**

4. When fraud is charged against a defendant, it is an acknowledged rule of pleading that the plaintiff must set forth the particulars of the fraud which he alleges.— **35 T. L. R., 41.**

2. Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed :

In money suits.

But where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, the plaint shall state approximately the amount sued for.

3. Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

When the subject-matter of the suit is immovable property.

---

5. A greater relief asked for in the plaint includes the lesser relief, and it can be granted.— **40 T. L. R.,** *127.*

6. An averment of undue influence would not be bad in law, merely because it is put forward as the means whereby a fraud was perpetrated.— **15 T. L. J.,** *440.*

7. Where a decree has been obtained fraudulently against a party, a subsequent suit for damages sustained thereby by the party against whom the prior suit was decreed, is not sustainable in the absence of a specific prayer in it, to set aside the prior decree on the ground of fraud.— **18 T. L. J.,** *541.*

8. See also—
Or. VI, r. 17.—**16 T. L. J.,** *517.*

---

**Or. VII, r. 2** [= S. 46, Paras 2 & 3 = *Or. VII, r. 2*]

For Paras 2 and 3 of the old Section 46, see under Rule 1 above.

**Case Law.**

The plaintiff, the Muthalpidi of a Devaswom, sued the defendants, the Adhikaris thereof, for recovery of monies due on accounts.

With regard to the procedure to be followed:

*Held.*—Where the account books produced by the plaintiff are repudiated as not being a correct record, the procedure to be followed would be to call upon the plaintiff to file a statement showing details of the receipts and the disbursements during his stewardship, showing the extent to which he has been out of pocket in meeting such expenses. If any extraordinary expenses had been incurred, the authority for the same may also be required to be specified. The defendants should thereafter be required to file a counter statement, specifying the amounts which according to them had come into the hands of the plaintiff under the various items of receipts and such additional amounts, if any, that had been received by him under items not referred to by the plaintiff. A similar statement should also be called for as regards disbursements. Upon receipt of these two statements, the Court should determine the points of difference between the parties, allow them to adduce such evidence as they may with respect thereto and thereafter decide how the accounts would stand with reference to such items. Even if, as in the case, any debt has been alleged to be discharged, the truth or otherwise of the plea will have to be determined and its binding nature on the defendant decided.— **44 T. L. R.,** *334.*

---

When plaintiff sues as representative.

4. Where the plaintiff sues in a representative character, the plaint shall show not only that he has an actual existing interest in the subject-matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it.

Defendant's interest and liability to be shown.

5. The plaint shall show that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

Grounds of exemption from limitation law.

6. Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed.

---

**Or. VII, r. 3** [ = ,, = *Or. VII, r. 3* ]

**Or. VII, r. 4** [ = S. 46, Para 4 = *Or. VII, r. 4* ]

For Para 4 of the old Section 46, see under Rule 1 *Supra.*

**Case Law.**

Plaintiff sued for a declaration of his title to property belonging to an undivided *Konkani* family following the Hindu Law of the Benares School, and purchased by him under a decree for money passed against two of the senior members thereof. It was contended that plaintiff could not recover more than the shares of his decree-debtors on the ground that they were not sued in their capacity as managers of their family and that the other co-parceners were not parties to the plaintiff's decree.

*Held.*—Para 4 of Section 46 of the Civil Procedure Code does not apply to defendants sued in a representative character.—
**13 T. L. R., *5.***

**Or. VII, r. 5** [= S. 46, Para 5 =*Or. VII, r. 5* ]

For Para 5 of the old Section 46, see under Rule 1, *Supra.*

**Or. VII, r. 6** [ = S. 46, Para 6 =*Or VII, r. 6* ]

For para 6 of the old Section 46, see under Rule 1 *Supra.*

**Case Law.**

1. Under the last Clause of Section 46, C. P. C., (old), if the cause of action arose beyond the period ordinarily allowed by any law for instituting the suit, the plaint must show the ground upon which exemption from such law is claimed. The plaintiff was bound to have mentioned in his plaint the particular acknowledgment or acknowledgments made during the currency of the ordinary limitation period which would have given a fresh starting point of limitation and save the suit from bar (F. B.).—
**36 T. L. R., *300***
**(= 10 T. L. J., *420*).**

2. If the plaintiff really meant to rely upon any acknowledgment, he should have distinctly referred to it in his plaint as required by Section 46. No reference had been made in the plaint to any acknowledgment having been made so as to save the claim from limitation, and the plaintiff cannot take advantage of any ground of exemp-

Relief to be specifically stated.

7. Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

---

tion from the law of limitation which had not been set up in the plaint.—

**37 T. L. R.,** *19*
(= **10 T. L. J.,** *468*).

Dist.—17 T. L. J., 286.
Ref.—16 T. L. J., 517.

**3.** The plaintiff relied, in the case, on an acknowledgment made by the defendant's mother, to save the suit from limitation. This acknowledgment was not specifically pleaded in the plaint. It was necessary for the plaintiff to do so only in the event of his suit being *prima facie* time-barred upon the allegations contained in the plaint. According to the allegations in the plaint, there arose no question of limitation, and the omission to specially rely on any such ground was not fatal to the plaintiff's case.

**37 T. L. R.,** *256*
(= **11 T. L. J.,** *207*).

**4.** The last paragraph of Section 46 has to be given a liberal interpretation. If the facts that form the basis of the claim for exemption are referred to in the plaint, the requirements of the statute should be taken to have been satisfied, even though a specific statement is not contained in the plaint that those facts it is that take the case out of the ambit of the ordinary rule of limitation. The British Indian Courts appear to have always acted liberally in this matter and allowed one ground of exemption to be pleaded, though not specifically set up, in case exemption had been claimed on a different though not inconsistent ground. "When a plaintiff does satisfy the requirements of the Section by stating what is in his opinion the ground upon which he intends to get over the bar of limitation, he ought not to be precluded from taking another and not inconsistent ground should he be later advised that the latter is the true ground." (10 Bom., 846). The decisions in the British Indian cases tend to show that the tendency there is to give the statutory provision of the Code a liberal construction, and if one of the grounds of exemption is set out in the plaint, a reason different from the one assigned in the plaint could be validly urged by the plaintiff to show that his suit is within time, if such plea is set up in time to enable the other side to meet the same. Section 46 only requires the ground of exemption to be set out in the plaint in such cases, but does not prohibit any other ground to be pleaded on that behalf, if the raising of such plea will not contravene the provisions of the Code.

**17 T. L. J.,** *386*.

**5.** The object of the Legislature in requiring the ground of exemption from limitation to be stated in the plaint where the suit is filed after expiry of the period of limitation, is obviously to enable the defendant to meet it in his defence and at the trial. Where the statement made in the plaint was sufficiently intelligible to the defendant who has answered it in his written statement without taking any exception to its sufficiency or otherwise, the above object has been substantially achieved.

Objection based on plaintiff's failure to set out in plaint the ground of exemption from limitation or on its defect must be taken in the trial Court and it should not be allowed to be raised for the first time in the Court of final resort.— **43 T. L. R.,** *419*
(=**18 T. L. J.,** *213*).

Relief founded on separate grounds.

8. Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly.

---

**Or. VII, r. 7** [ = „ = *Or. VII, r. 7* = En. O. 20, r. 6]

Rule 6 of Order XX of the Rules of the Supreme Court, 1883, is as follows:—

"6. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it shall not be necessary to ask for general or other relief, which may always be given, as the Court or a Judge may think just, to the same extent as if it had been asked for. And the same rule shall apply to any counter-claim made, or relief claimed by the defendant, in his defence."

### Case Law.

1. Certain immovable property belonging to the plaintiff was sold in execution of an *ex parte* decree obtained against him. It was alleged that he had no notice of the suit, nor of the attachment and sale, and that the *ex parte* decree and execution proceedings were fraudulent. He sued to recover the property so sold, but did not seek for any relief as regards the decree.

*Held.*—The omission to seek for cancellation of the decree was fatal to the relief sought for, and the validity of the decree could not, in the circumstances of the case, be considered even incidentally.— **10 T. L. R., *4*.**

Dist.—17 T. L. R., 143.

2. Judgments and decrees relate to the state of things at the date of the suit. It is an elementary principle that a plaintiff who seeks possession must show that at the date of suit he was entitled to such relief.— **2 T. L. J., *145*.**

3. Where the original relief claimed has, by change of circumstances, become inappropriate, Courts may take into consideration events that have happened since the date of suit in deciding what should be the appropriate relief that should be decreed.— **35 T. L. R., *155*.**

Fol.—18 T. L. J., 407.
39 T. L. R., 292.
Ref.—42 T. L. R., 128
(=15 T. L. J., 326).
42 T. L. R., 406
(=16 T. L. J., 488).
12 T. L. J., 154.

4. A Court has in proper cases inherent power to afford relief on the basis of altered conditions, having regard to events which have happened after the institution of the suit.— **13 T. L. J., *407*.**

Dist.—42 T. L. R., 128
(=15 T. L. J., 326).
Ref.—43 T. L. R., 344
(=17 T. L. J., 161).
Fol.—18 T. L. J., 640.

4. The Court may take notice of events that happened subsequent to the filing of the suit to make the relief granted appropriate and effective and to shorten litigation. This does not go to the length of saying that the plaintiff who had no right to sue on the date of the suit may be given any relief owing to the change of circumstances which took place after the filing of the plaint in the original Court.— **42 T. L. R., *128***
**(=15 T. L. J, *326*).**

Ref.—43 T. L. R., 344
(=17 T. L. J., 161).
Fol.—18 T. L. J., 640.

---

**Or. VII, r. 8** [ = „ = *Or. VII, r. 8* = En. O. 20, r. 7]

Rule 7 of Order XX of the Rules of the Supreme Court, 1883, is as follows:—

Procedure on admitting plaint.

Concise statements.

9. (1) The plaintiff shall endorse on the plaint, or annex thereto, a list of the documents (if any) which he has produced along with it; and, if the plaint is admitted, shall present as many copies on plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief claimed in the suit, in which case he shall present such statements.

(2) Where the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued.

(3) The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

(4) The chief ministerial officer of the Court shall sign such list and copies or statements if, on examination, he finds them to be correct.

---

"7. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off, or counterclaim founded upon separate and distinct facts."

---

Or. VII, r. 9 [ = S. 54 = *Or. VII, r. 9*]

I. 1. Section 54 of Regulation II of 1065 was as follows :—

"54. *Procedure on admitting plaint.*—The plaintiff shall endorse on the plaint, or annex thereto, a memorandum of the documents (if any) which he has produced along with it ; and, if the plaint be admitted, shall present as many concise statements of the nature of the claim made and of the relief or remedy required in the suit, as there are defendants,

If the plaintiff sues, or the defendant or any of the defendants is sued in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued,

The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

The chief ministerial officer of the Court shall sign such memorandum and statements if, on examination, he finds them to be correct."

2. This Section has also another (last) Para for which see under Order IV, Rule 2.

3. The Statement of Objects and Reasons said :—" Section 58 (old Indian Code), as amended, relieves the plaintiff from the task of furnishing the defendants with copies of the plaint. It entails much labour and expense on the plaintiff without commensurate advantage to the defendants. The concise statements referred to in this

10. (1) The plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

Return of plaint.

(2) On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

Procedure on returning plaint.

---

Section are sufficient for all ordinary purposes."

II. "In Rule 9, it is provided that copies of plaints are required to be filed, along with the plaint, except when the Court grants exemption. At present, it is only an abstract of the plaint that is required to be filed. It is well known that owing to the provision now in force, long and numerous adjournments are obtained on the ground that copies of plaints had not been given. This delay can now be avoided. In certain cases, however, where this would entail disproportionate and unnecessary hardship, the Court is given power to grant exemption, and allow the filing of concise statements only."— *Notes on Clauses.*

**Or. VII, r. 10** [= S. 53 = *Or. VII, r. 10*]

I. *Sub-Rule (1).*—See Sections 14 to 19 inclusive, for the Court in which a suit should be instituted.

II. Section 53 of the old Regulation was as follows :—

"53. ***When plaint shall be returned to be presented to proper Court.***—The plaint shall be returned to be presented to the proper Court in the following cases :—

(a) if a suit has been instituted in a Court whose grade is lower or higher than that of the Court competent to try it, where such Court exists, or where no option as to the selection of the Court is allowed by law ;

(b) if, in a suit relating to immovable property, but not coming under the Proviso to Section 12, it appears that no part of such property is situate within the local limits of the jurisdiction of the Court to which the plaint is presented ;

(c) if, in any other case, it appears that the cause of action did not arise, and that none of the defendants are dwelling, or carrying on business, or personally working for gain, within such local limits.

*Procedure on returning plaint.*—On returning a plaint, the Judge shall, with his own hand, endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reason for returning it."

**Case Law.**

1. Where in a suit filed, it is found in the course of the trial that the suit is beyond the jurisdiction of the Court and there is no reason to question the *bona fides* of the plaintiff, the plaint ought to be returned to the plaintiff to be filed in the proper Court giving him credit for the fee already paid.— **1 T. L. R.,** *61.*

Ref.—29 T. L. R., 148 (=4 T. L. J., 4).

2. When a Court finds that it has no jurisdiction to entertain a suit, the plaint ought to be returned to the plaintiff to enable him to present it to the Court that has jurisdiction.— **1 T. L. R.,** *96.*

Fol.—8 T. L. R., 161.

3. Where a plaint filed in one Court is returned to be presented to another Court,

it is not competent to the plaintiff to put in a fresh suit with an altered cause of action or a prayer for additional relief. He is bound to present the identical plaint returned, with any addition made that may have been ordered by the Court.—

8 T. L. R., *122*.

**4**. Plaintiff brought a suit in the Zillah Court. The Zillah Judge ordered the plaint to be returned to be presented to the Munsiff's Court where the suit was filed and decided. In appeal, the Judge who heard the case, finding the suit to be beyond the Munsiff's pecuniary jurisdiction, dismissed it with costs throughout.

*Held*.—The Zillah Judge should file the plaint as an original suit in his Court and try it on the merits, giving credit for the instititution fees plaintiff had paid in the Munsiff's Court.

When a suit has proceeded to judgment in a wrong Court (*i. e.*, which is ultimately found to have had no jurisdiction to try it) owing to the default of the party, an order of dismissal may be passed, as the party must then take the consequence of his own carelessness. But when the procedure in the wrong Court is due solely to the mistake of the superior Court before which the suit was rightly brought in the first instance, the party cannot be visited with the consequences of a procedure for which he was not in any way responsible. In such cases, though the proceedings without jurisdiction ought to be cancelled, it is nothing but equitable that the plaintiff must be given credit for the institution fees that he has paid into the wrong Court under the orders of the Court which ought to have filed the plaint in the first instance.—

8 T. L. R., *161*.

**5**. The value of a suit to set aside a Court sale is not the amount of the sale proceeds but is the market value of the property sold. In special appeal, it was discovered that the value of the suit was not correctly made. The mistake in the valuation was purely due to a misconception of the law not only on the part of the plaintiff but also on the part of the other party and the two lower Courts. The decrees of the lower Courts were therefore, set aside and plaint returned to the plaintiff to be presented to the Zillah Court with the additional Court fee to cover the present valuation of the suit.— 8 T. L. R., *166*.

**6**. In returning plaints to be presented to the proper Court, no Court can extend the time limited by express law.—

14 T. L. R., *206*.

**7**. When a Court finds reasons to suspect that a particular item in the valuation is incorrectly put in to bring a suit within its jurisdiction, it is justified in returning the plaint in default of plaintiff's proving the valuation to be correct.

Where, therefore, a plaint was returned by a District Judge on the ground that when interest was calculated to the extent of half the principal, the claim fell below the Court's jurisdiction.

*Held*.—(1) The order of return was correct.

(2) A mistake as to the item claimable for interest is analogous to mistakes as to market values of properties as to which, if made in good faith, credit is allowed for the fees paid to the wrong Court.—

18 T. L. R., *212*.

**8**. Plaintiff sued for renewal of a Kanom granted by a Devaswom in respect of certain properties. The defendant contended that the real object of plaintiff's suit was to establish plaintiff's alleged right as sole trustee to the properties of the Devaswom. It was found by the Munsiff before whom the suit was filed, after taking evidence, that the real object of the plaintiff's suit was, as contended for by the defendant, and the plaint was accordingly returned for presentation to the District Court, as the value of the properties of the Devaswom was admittedly above Rs. 6,000. On appeal, the District Judge confirmed the Munsiff's order,

11. The plaint shall be rejected in the following cases :—

Rejection of plaint.

(*a*) where it does not disclose a cause of action ;

(*b*) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so ;

(*c*) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so ;

(*d*) where the suit appears from the statement in the plaint to be barred by any law.

---

In revision, it was contended that the Munsiff should have rejected the plaint under Section 50 C. P. C. [Or. VII, r. 11], and not returned it under Section 53 (*a*).

*Held.*—The order of the Munsiff was correct.

It is only when the relief claimed is undervalued, and the plaintiff fails to correct the value as required by the Court, that the plaint can be rejected under Section 50. But in the case, the relief nominally claimed in the plaint was properly valued, but it was found by the Court that the real object of the suit was for declaration of plaintiff's alleged title to the Devaswom. The value of the Devaswom properties on which the plaintiff had to pay institution fees for getting such a declaration being admittedly above Rs. 6,000, Section 53 (*a*) properly applied and the order returning the plaint for presentation to the proper Court was correct. "When the decision is that the Court has no jurisdiction, that is a decision that the plaint ought not really to have been admitted. It ought to have been returned."—

**29 T. L. R., *148***
**(= 4. T. L. J., *4*).**

**9.** The original plaint was returned to the plaintiff by the District Court and a fresh plaint with certain amendments was presented to the Munsiff. With this fresh plaint, the plaintiff also filed the old returned plaint and got credit under the Court Fees Regulation for the Court-fee paid into the District Court on the latter plaint. This fact does not, however, constitute the second suit a continuation of the first, as under the Law of Limitation, the re-instituted suit is regarded as an independent one in all respects except that, under certain conditions, the time requisite for going from Court to Court is excluded in computing the period of limitation. The reinstituted suit is a new suit, and is governed by the law applicable to it at the time of the re-institution.—

**31 T. L. R., *169***
**(= 5 T. L. J., *344*).**

**10.** See also.—

Or. VI, r. 17.—**1 T. L. R., *48*.**
**34 T. L. R., *298*.**
" XL, r. 21.—**45 T. L. R., *252***
**(=19 T. L. J., *952*).**

---

**Or. VII, r. 11** [ = S. 50 = *Or. VII, r. 11* ]

**1.** Section 50 of Regulation II of 1065 was as follows :—"50. ***When plaint shall be rejected.***—The plaint shall be rejected in the following cases :—

(*a*) if the relief sought is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so ;

(*b*) if the relief sought is properly valued, but the institution fee prescribed by law is not paid in part or whole, and the plaintiff, on being required to pay the amount of the fee due within a time to be fixed by the Court, fails to do so in the manner required by law for the time being in force ;

(*c*) if the suit appears from the statement in the plaint to be barred by any positive rule of law ;

(*d*) if the plaint, having been returned for amendment within a time fixed by the Court, is not amended within such time."

**2.** See Order VI, Rule 18, *re* last Clause (*d*) of the above Section.

### Case Law.

**1.** The following question was referred to a Full Bench :—"Whether Section 50 of the Civil Procedure Code read with Section 4 of the Limitation Regulation and Section 8 of the Court Fees Regulation, permits a party who has presented an appeal memorandum within time to pay the Court fee on it after the period prescribed by law has expired and whether it is obligatory on a Court, before rejecting an appeal as barred by time, to give notice to the appellant to pay the necessary fee within a certain time."

***Held.***—An appeal memorandum unaccompanied by any fee is not a document of which judicial notice can be taken, except in cases specially provided for by law and the Court is not bound to give notice to the appellant before rejecting such appeal (F. B.).—
**14 T. L. R., *102.***

Dis.—2 T. L. J., 340.
Overruled.—28 T. L. R., 36
(=3 T. L. J., 85).

**2.** The dismissal of a claim for set-off is like the rejection of a plaint under Section 50 for non-payment of court-fees. The default is one which cannot be cured in appeal.— **2 S. D., *188.***

**3.** (1) When a plaint is presented within the prescribed period of limitation on a paper insufficiently stamped and time is given by the Court to make good the deficiency, the suit is not barred by limitation if the deficiency is supplied within the time fixed by the Court but after the limitation period has expired.

*Per Ramachandra Row, J.*—Section 50 provides that the Court should fix a time for the payment, and if it is not paid within such time, the plaint should be rejected. That this is the procedure to be adopted even when no part of the fee has been paid is clear from Clause (*b*) of the Section. The forced construction put upon this Clause in 14 T. L. R., 102 appears to be the best proof of the correctness of the objection to such construction. * * The mischief of the reasoning in the 14 T. L. R. case, consists in the assumption that a plaint in fact is not such if the prescribed fee is not paid. The unsoundness of this assumption will appear clearly when it is remembered that Sections 7 and 8 of the Court Fees Regulation do not provide that the additional fees should not be collected after the expiry of the period of limitation. * * It seems to be no matter how or why the plaint was *received* in Court without the payment of the fee payable on it. The Legislature did not think it necessary to provide that an enquiry should be held to ascertain if the omission was honest or dishonest on the part of the party. On the other hand, it has expressly provided that the plaint shall be rejected on the plaintiff's omission to pay the fee within a time to be fixed by the Court. This appears to support the view that the intention of the Legislature is not that the omission to pay the fee in the first instance should be followed by a dismissal of the suit, without giving notice to the

12. Where a plaint is rejected, the Judge shall record an order to that effect with the reasons for such order.

Procedure on rejecting plaint.

13. The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

Where rejection of plaint does not preclude presentation of fresh plaint.

*Documents relied on in plaint.*

14. (1) Where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

Production of document on which plaintiff sues.

---

plaintiff to pay the balance in a given time. * * The Legislature was particular only about the collection of the full fee so that the public revenue may not be affected. When once that condition is fulfilled, it allows the parties the opportunity to have their proceedings carried on without any let or hindrance.

(2) The object of the Court Fees Regulation being purely fiscal, it cannot be read into the provisions of the Civil Procedure Code or the Limitation Regulation (F. B.).

**28 T. L. R.**, *36*
(=**3 T. L. J.**, *85*).

**4.** Section 50 of the Civil Procedure Code did not prescribe any limitation as to the stage at or the time within which the powers given to the Court by that Section should be exercised. The fact that the Munsiff in the prior suit had expressed his findings on the issues raised and had indicated in his judgment the terms of the decree to be passed, in case the plaintiff obeyed the order of the Court for the payment of additional Court fee within the time specified, did not render Section 50 inapplicable. An order under this Section may be passed at any stage of the suit.—

**32 T. L. R.**, *15*.

**5.** See also—

Or. VII, r. 10.—**29 T. L. R.**, *148* (=**4 T. L. J.**, *4*).

„ XL, r. 1.—**45 T. L. R.**, *273* (=**19 T. L. J.**, *1024*).

---

**Or. VII, r. 12** [ = S. 51 = *Or. VII, r. 12*]

The words "with his own hand" which occurred after the word "record," in the old Section 51, have been omitted.

**Case Law.**

**1.** The suit was on simple lease for recovery of five palmyra trees. Defence set up Kanom of the whole garden. Both the Courts below found concurrently against the plaint lease. The plaintiff, in special appeal, prayed for a decree on the lease admitted by the defendant.

*Held.*—The prayer, if granted, will entirely change the nature of the suit as brought and will be opposed to Section 51 of the C. P. C.— **1 S. D.**, *78*.

**2.** See also—

Or. VI, r. 17.—**1 T. L. R**, *48*.

---

**Or. VII, r. 13** [=S. 52 = *Or. VII, r. 13*]

---

List of other documents.

(2) Where he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

Statement in case of documents not in his possession or power.

15. Where any such document is not in the possession or power of the plaintiff, he shall, if possible, state in whose possession or power it is.

---

**Or. VII, r. 14** [= S. 55 = *Or. VII, r. 14*]

I. For failure to produce documents, see Rule 18 *Infra.*

II. Great laxity is shown by the subordinate Courts in the matter of production of documents, in spite of the salutary and imperative provisions of Sections 55 to 59, 133 and 134 of the Code of 1065, corresponding to Rules 14 to 18 of Order VII and Rules 1 and 2 of Order XIII. Under Rule 1 of Order XIII, the parties or their pleaders are enjoined strictly to produce at the first hearing of the suit all the documentary evidence of every description in their possession or power, on which they intend to rely, while under the Code of 1065 (Section 133), they were required only to have such documents with them in readiness to be produced when called for by the Court. Even under the old Code, under the Sadr Court Proceedings dated 20-3-1041, it was pointed out that punctuality in the matter of the time of production of documents should be enforced, and that when parties asked for an extension of time for their production, the same should be regulated by a definite order from the Court, and this should not generally be admitted unless produced within the time specially granted. In Civil Circular No. 37 of 1079, the High Court laid down that laxity in the reception of documents in evidence at irregular stages regardless of the provisions of Section 133, as far as possible be avoided. Under Article 68 of the Civil Courts Guide, now in force, it has been made obligatory on the part of the Courts to call upon the defendant to file a list of documents proposed to be relied on by him and fix a time for its production, in cases where the production of the documents themselves is not directed. It is highly desirable that the above provisions are rigidly enforced, and the provisions of the Code relating to inspection and discovery of documents and interrogatories are availed of as far as possible, so as to enable the Courts to narrow the compass of the disputes between the parties as much as possible."—

**19 T. L. J.,** ***510.***

**Case Law.**

1. Where a suit is for money due on a bond or pro-note in the possession of the plaintiff, the bond or pro-note should be produced with the plaint.— **1 S. D.,** ***60.***

2. See also.—

Or. XXXIX, r. 21.—

**43 T. L. R.,** *388*

(= **17 T. L. J.,** *711*).

---

**Or. VII, r. 15** [= S. 56 = *Or. VII, r. 15*]

---

Suits on lost negotiable instruments.

16. Where the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may pass such decree as it would have passed if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

Production of shop-book.

17. (1) Where the document on which the plaintiff sues is an entry in a shop-book or other account in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies.

Original entry to be marked and returned.

(2) The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed.

Inadmissibility of document not produced when plaint filed.

18. (1) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(2) Nothing in this Rule applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory.

---

**Or. VII, r. 16** [= S. 57 = *Or. VII, r. 16*]

**Or. VII, r. 17** [= S. 58 = *Or. VII, r. 17*]

"Rule 17 is aimed at giving convenience to traders and bankers, who cannot afford to leave their account books indefinitely in Courts."— *Notes on Clauses.*

**Or. VII, r. 18** [= S. 59 = *Or. VII, r. 18*]

# ORDER VIII.

## Written Statement and Set-off.

Written statement.

1. The defendant may, and, if so required by the Court, shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence.

New facts must be specially pleaded.

2. The defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.

---

**Order VIII** : "This Order deals with statements filed in defence, and contains several new provisions intended to oblige the defendant to disclose fully the grounds of defence."— *Notes on Clauses.*

**Or. VIII, r. 1** [=S. 105 = *Or. VIII r. 1*]

I. The corresponding Section of Regulation II of 1065 ran as follows :—

"105. *Written statements.*—The parties may, at any time before or at the first hearing of the suit, tender written statements of their respective cases, and the Court shall receive such statements and place them on the record."

II. As to the contents of written statements, see Order VI, Rule 2, and also Rule 7 *Infra.*

### Case Law.

1. Generally, objections which are not declared by law imperatively to operate as legal bar to actions, such as limitation, and which may or may not be allowed by Courts in the exercise of discretionary powers vested in them by law, should be taken by the parties interested in doing so, at the earliest opportunity and pressed upon the Court's attention at the different stages of the action. Omission to notice such objections on the part of the Courts, when the parties do not urge them, or waive them either by express words or by conduct, would not be serious irregularity to warrant interference with the final decisions, if otherwise sound.— **9 T. L. R.,** *17.*

2. No party can be allowed to plead contrary to the pleas successfully urged by him in a former litigation against his adversary. The effect of a contrary doctrine would be to bring the administration of justice into ridicule.— **9 T. L. R.,** *177.*

3. It is open to the defendant to raise inconsistent defences, and if in fact defendant wants to set the plea (in the case, the plea denying the genuineness of the pro-note and impugning the assignment to plaintiff as fraudulent), he should have been asked to put in a written statement and plaintiff should have been given opportunity to rebut defendant's evidence on the issue.— **18 T. L. R.,** *179.*

4. A plea cannot be entertained in appeal, if it has not been specifically taken in the Court of first instance.—**15 T. L. J.,** *427.*

**Or. VIII, r. 2** [= „ = *Or. VIII, r. 2*] = **En.** O. 19, r. 15]

I. Rule 15 of Order XIX of the Rules of the Supreme Court, 1883, is as follows:—

3. It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

Denial to be specific.

---

"15. The defendant or plaintiff (as the case may be) must raise by his pleading all matters which show the action or counter-claim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the case may be, as if not raised would be likely to take opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as, for instance, fraud, Statute of Limitations, release, payment, performance, facts showing illegality either by statute or common law or Statute of Frauds."

"This Rule enforces what is one of the cardinal principles of the present system of pleading a defence or reply. The principle that all denials or traverses in a decree or a reply to a counter-claim should be specific and not evasive is dealt with by rr. 13, 17 and 19 [see under Rules 5, 3 and 4]. This Rule and r. 20 [see Rule 8 of Order VI] deal with affirmative defences and replies, and defences and replies in confession and avoidance, and enforce another cardinal principle, which is that all such defences and replies must be specifically pleaded so that the opposite party may know exactly what case he has to meet at the trial."—

*Yearly Practice for 1925.*

II. A plea raised on the doctrine of *caveat emptor* ought to be specifically put forward. This was not done by the defendants who, by their failure to contest the suit, must be held to have waived the plea and allowed the suit to be at least partially decreed *ex parte* against them.—

15 T. L. J., *332.*

**Or. VIII, r. 3** [ = „ = *Or. VIII, r. 3* = En. Or. 19, r. 17 ]

I. 1. "The Rule renders it obligatory to make denials specific, and not general, as is very often the practice now."—

*Notes on Clauses.*

2. Under Rule 5, every allegation of fact in the plaint will be taken to be admitted, if it is not denied specifically or by necessary implication or stated to be not admitted.

II. Rule 17 of Order XIX of the Rules of the Supreme Court, 1883, as amended, is as follows:—

"17. It shall not be sufficient for a defendant in his defence to deny generally the grounds alleged by the statement of claim or for a plaintiff in his reply to deny generally the grounds alleged in a defence by way of counterclaim, but each party must deal specifically with each allegation of fact of which he does not admit the truth except damages."

"This Rule and rr. 13 and 19 [see under Rules 5 and 4] enforce the first cardinal principle of the present system of pleading a defence to a statement of claim or a reply to a counterclaim which is that traverses or denials must not be vague or general or evasive, but must be specific and must deal specifically with each allegation of fact, and as regards each must answer the point of substance."— *Yearly Practice for 1925.*

**Case Law.**

The suit was on a promissory note executed by defendant to plaintiff, for Rs. 198 towards remuneration for the services of plaintiff as Vakil, undertaking to pay interest at twelve per cent, per annum.

Evasive denial.

**4.** Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

Specific denial.

**5.** Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

---

The undertaking to pay interest from the date of the commencement of the engagement was held not unconscionable or legally unenforceable.

As regards the rate of interest, no specific contention was raised in the written statement by the defendant on this question. Even in the appeal memorandum before the lower Appellate Court, the defendant did not choose to question the propriety of the rate claimed in the plaint. The argument that, by denying liability for interest as a whole, the respondent must be taken to have disputed the rate of interest also could not be accepted as sound. If the defendant wanted to object to the rate of interest as being extortionate or excessive it was incumbent on him to raise it specifically. To allow him to raise the plea in second appeal would virtually be allowing him to spring the same by surprise on the other side.— **17 T. L. J., *428*.**

**Or. VIII, r. 4 [= „ = *Or. VIII, r. 4* = En. Or. 19, r. 19]**

Rule 19 of Order XIX of the Rules of the Supreme Court, 1883, runs thus :—

"19. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so.........along with those circumstances."

**Or. VIII, r. 5 [= „ = *Or. VIII, r. 5* =En. Or. 19, r. 13]**

I. **1.** "Rule 5 provides sufficient penalty for omission to make a denial specific ; in the absence of such denial, allegations in the plaint are deemed to have been admitted."— *Notes on Clauses.*

**2.** The Indian Special Committee say :— "They have, however, endeavoured to modify the rigour of the rules by providing, in accordance with Section 58 of the Indian Evidence Act, that the Court may, notwithstanding the absence of any special denial, require any fact to be proved by the party who relies upon it."

**3.** The Proviso corresponds with the Proviso to Section 58 of the Indian Evidence Act. That Section is as follows :—

"No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which,

Particulars of set-off to be given in written statement.

6. (1) Where, in a suit for the recovery of money, the defendant claims to set off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards, unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set off.

Effect of set-off.

(2) The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off; but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

(3) The Rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off.

*Illustrations.*

(*a*) A bequeaths Rs. 2,000 to B and appoints C his executor and residuary legatee. B dies and D takes out administration to B's effects. C pays Rs. 1,000 as surety for D; then D sues C for the legacy. C cannot set off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to payment of the Rs. 1,000.

(*b*) A dies intestate and in debt to B. C takes out administration to A's effects and B buys part of the effects from C. In a suit for the purchase-money by C against B, the latter cannot set off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B and the other as representative to A.

---

before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time, they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admission."

The Rule without the Proviso, is the same as the Rule of English law; and the Proviso is intended to modify, as noted above, the rigour of that Rule.

**Or. VIII, r. 6** [= S. 106 = *Or. VIII, r. 6*]

I. 1. Section 106 of Regulation II of 1065, corresponding to this Rule, ran as follows:—

"106. *Particulars of set-off to be given in written statement.*—If, in a suit for the recovery of money, the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, and if in such claim of the defendant against the plaintiff both parties fill the same character as they

(c) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods and is liable to him in compensation which he claims to set off. The amount not being ascertained cannot be set off.

(d) A sues B on a bill of exchange for Rs. 500. B holds a judgment against A for Rs. 1,000. The two claims being both definite pecuniary demands may be set off.

(e) A sues B for compensation on account of trespass. B holds a promissory note for Rs. 1,000 from A and claims to set off that amount against any sum that A may recover in the suit. B may do so, for, as soon as A recovers, both sums are definite pecuniary demands.

(f) A and B sue C for Rs. 1,000. C cannot set off a debt due to him by A alone.

(g) A sues B and C for Rs. 1,000. B cannot set off a debt due to him alone by A.

(h) A owes the partnership firm of B and C Rs. 1,000. B dies leaving C surviving. A sues C for a debt of Rs. 1,500 due in his separate character. C may set off the debt of Rs. 1,000.

---

fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards, unless permitted by the Court, tender a written statement containing the particulars of the debt sought to be set-off. Nothing in this Section shall be deemed to bar the right of set-off, where the cross demands are so connected in their nature and circumstances as to make it inequitable, in the opinion of the Court, to subject the defendant to the necessity of a cross suit.

*Inquiry.*—The Court shall thereupon inquire into the same, and if it finds that the case fulfils the requirements of the former part of this Section, and that the amount claimed to be set-off does not exceed the pecuniary limits of its jurisdiction, the Court shall set-off the one debt against the other :

*Proviso.*—Provided that the defendant may relinquish any portion of the amount claimed to be set-off so as to bring it within the pecuniary limits of the Court's jurisdiction, but he shall not afterwards sue in respect of the portion so relinquished.

*Effect of set-off.*—Such set-off shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original and on the cross-claim ; but it shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree."

[Here follow Illustrations (a) to (h), the same as in the new Rule.]

2. The Proviso in the above Section and the second sentence in the first Para were additions not found in the corresponding Section 111 of the Indian Code of 1882. The object was thus explained :—"The Proviso gives to the defendant the *option* of foregoing any portion of the claim pleaded by him in set-off, in order to enable him to obtain a relief in the plaintiff's suit. In case of plaintiff's insolvency, the defendants often find it advantageous to avail themselves of the option. In order to prevent further litigation in respect of the same claim, it is provided, in accordance with the spirit of Section 46, that he shall not afterwards sue in respect of the portion relinquished. The other amendment in the Section is made in conformity with the rulings of the Courts on its construction."—*S. O & R., Para 17.*

### Case Law.

1. The foreman of a Chitty paid the defendant, a prized subscriber, a portion of the Chitty amount and executed a bond for the balance. The defendant executed a security bond for punctual payment of

future instalments. The defendant obtained a decree against the foreman for the balance money due under the latter's bond. If the foreman sued the defendant (subscriber) on his security bond, the latter is entitled to claim a set-off of the decree amount under the decree he had obtained against the foreman. To raise the plea of set-off is tantamount to filing a cross-suit. The Court is bound to set-off the smaller debt against the larger, and to make a final decree between the parties.—

**3 T. L. R., *13*.**

**2.** Where the plaintiffs sued for the recovery of certain items of consideration recited in a sale deed executed by them to the 2nd defendant and the latter pleaded that he was entitled to set-off against the plaint sum the amount of Vilayartham he paid to the Government which assumed the property as the original owner died issueless :

*Held.*—As in cases of sales the law implies the existence of an implied covenant of title (Section 55, Clause 2, of the Transfer of Property Act) and as the escheat proceedings showed that the plaintiffs had no ownership of the properties sold, the second defendant was entitled to set-off the Vilayartham against the plaint amount.—

**14 T. L. R., *109*.**

Dist.—19 T. L. R., 185.
Ex. —37 T. L. R., 209
(= 11 T. L. J., 151).
Ref.—1 S. D., 107.

**3.** The foreman of a Chitty sued a subscriber for the instalments due from the date of default. The second defendant, the son of the defaulting subscriber (the first defendant) sought to set-off against the plaint amount the money due to himself from the foreman on account of subscriptions paid by him. The District Judge held that the set-off pleaded could not be allowed in the suit.

*Held.*—(1) The view taken by the District Judge was wrong, and the second defendant was entitled to plead a set-off of the separate debt due to himself from the plaintiff.

When the second defendant appeared as the heir of his father, his father's property (for the purpose of the suit) belonged to him in the same manner as C, the surviving partner was entitled to the firm property on the death of his partner B in Illustration (*b*) of Section 106. On the same principle on which the partnership debt due to C could be set-off against a suit for his separate debt, the second defendant is entitled to plead a set-off of the separate debt due to himself from the plaintiff.

(2) The Chitty debt due to the second defendant was an "ascertained sum," as that expression includes sums which are capable of being immediately ascertained.

"The right of set-off exists not only when there appear to be mutual debts and credits but also where the cross demands arise out of the same transaction or are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant should be driven to a cross suit. Considering that the debts arose out of the same Chitty transaction and the second defendant being in the position both of debtor and creditor, it is inequitable to make him pay what he owes to plaintiff, if in fact plaintiff owes him more. There is nothing gained by driving second defendant to another suit, Section 106 being only a rule of procedure which does not govern the general equitable rule as to the right of set-off.— **15 T. L. R., *68*.**

Ref. —25 T. L. R., 176.
19 T. L. J., 702.
Fol. —6 T. L. J., 286.

**4.** An arrangement by which the foreman of a Chitty agreed to set-off a debt due by him in another transaction to a prized subscriber against his future subscriptions is void as against the non-prized subscribers who hold a lien on such subscriptions, as the foreman who must be regarded as a

trustee of the Chitty fund is incompetent to deal with it except in pursuance of the object of the trust.

It is evidently a principle of natural reason and justice that when two parties are mutually indebted in respect of one and the same transaction, one of the parties should not be compellable to pay the debt which he has incurred and be left to recover by other proceedings that to which he is entitled, especially so, when, owing to the bankruptcy of his debtor to whom he also is indebted, he has no means of recovering his debt except by way of set-off of one debt against the other. (In the case, the foreman became insolvent and allowed the Chitty scheme to collapse since the 12th drawing).

There was nothing in the circumstances of the case to show an intention, much less a manifest intention, on the part of the 3rd and 4th defendants (prized subscribers) to waive their lien for the unpaid portion of the prize money on the future subscriptions payable by them. The 3rd and 4th defendants can in equity be compelled only to pay back what they have actually received over and above the money already paid, and their claim for setting off the unpaid portion of the prize money against the future subscriptions due by them seems admissible. (F. B.).— **16 T. L. R., *193.***

Dist.—34 T. L. R., 167.
Ref.—18 T. L. J., 671.

**5.** The plaintiff was the assignee of a promissory note executed by the 1st defendant in favour of the 2nd defendant. The question in the case was of an equitable right which the first defendant who was the debtor as well as the creditor of the second defendant had to set off mutually the debts due by him and from him. That such right of set-off exists in equity there can be no doubt and the right is based upon the equitable doctrine that it is unjust to compel a debtor to pay his debts and drive him to recover his claim against his creditor by a separate suit.

There can also be no doubt that the assignee even for value of any debt or actionable claim takes the thing assigned subject to all the equities which may be urged against the assignor.

Where there is a chose in action, whether it is a debt or an obligation or a trust fund, and it is assigned, the person who holds the debt or obligation or has undertaken to hold the trust fund, has against the assignee the same equities as he would have had against the assignor.

A debt was due from B to A; but there was also a debt from A to B which B might set-off in an action by A. In this state of things, A assigned the first debt to C without B's knowledge, and C sued on the assignment.

*Held.*—B was entitled to the set-off as against C.— **17 T. L. R., *22.***

Dist.—48 T. L. R., 172
(= 18 T. L. J., 261).

**6.** A mortgagee setting up an oral agreement contrary to the terms of the mortgage deed as to payment of Government tax did not pay the same. The oral agreement was found to be not true. The mortgagor paid the tax for 26 years and in the redemption suit claimed among other items to set-off the whole amount against the mortgage-debt. The mortgagee pleaded limitation bar and the lower Court held that the mortgagor's right to set-off more than 12 years' tax was barred by limitation.

*Held.*—So long as the redemption suit was not barred, all sums due to the mortgagor which fall within the scope of, and had to be taken into calculation in, the settlement of accounts did not become barred. The Government due was one of such items and therefore the mortgagor was entitled to set-off the whole of the tax paid by him against the mortgage-debt.— **20 T. L. R., *38.***

Ref.—25 T. L. R., 176
( = 4 T. L. J., 323).

**7.** A decision of the Tanthri of the Suchindrum temple that a Bhagavathar attached thereto became an outcaste owing to

private misconduct was cancelled by the Dewan, under the sanction of H. H. the Maha Rajah, and the Bhagavathar was ultimately reappointed to that temple. Subsequently, when the Melshanthi—plaintiff saw the Bhagavathar in the pagoda, he notwithstanding the Government decision, refused to perform the usual service unless Punyaham was performed. Consequently, the Punyaham and the supplementary Kalasam ceremonies were performed. In the suit by the Melshanthi for arrears of pay where the defendant, Sirkar, set up plaintiff's liability for the expenses of the purification ceremonies, plaintiff claimed immunity on the ground that the Tanthri's decision was final on matters of pollution, &c., and contended that the liability of the Tanthri was not ascertained and that defendant was not entitled to claim a set-off in this case:

*Held* (confirming the District Judge's decree).—(1) The ecclesiastical head in this State is His Highness the Maha Rajah: the Tanthri is the ecclesiastical referee of, and adviser to, Government and he cannot claim any jurisdiction independent of and paramount to the sovereign power.

(2) In the case of wrong-doers the Court may hold each liable for the whole damage.

(3) Where the damages claimed by the defendant arise from the same transaction in respect of which the plaintiff advances his claim in the suit, the set-off is equitable.

The defendant did not claim a set-off under the first part of Section 106. Hence the objection that the set-off was claimed of unliquidated damages was untenable. Unlike the corresponding Section of the British Act, Section 106 expressly allows the set-off of any sum on equitable grounds, as held in 2 M. H. C. R., 296, the principle of which, though not embodied in the British Act, has been expressly recognised by all the British Indian High Courts.—

**21 T. L. R.,** ***211.***

Fol.—6 T. L. J., 286.
Ref.—19 T. L. J., 702.

8. Where defendant claims a set-off, his written statement is in the nature of a plaint in a cross suit, and Court fees should be payable on the amount claimed as if it were such a plaint. So, in suits for partition or for dissolution of partnership or for accounts, defendants are given reliefs on their written statements if they pay Court fees on the value of the reliefs decreed to them.— **23 T. L. R.,** ***123.***

9. Suit by two Uralers of a Devaswom against a third Uralan (who was also a tenant of the Devaswom) for arrears of Michavarom from 1070. The defendant *inter alia* pleaded a set-off consisting of various items of money alleged to have been expended by him at the request of his fellow Uralers for conducting litigation and enforcing renewals of Kanom documents. It was urged that the defendant was not entitled to put forward the plea of set-off as the claim sought to be set off was barred by limitation.

*Held.*—(1) In the circumstances of the case, the claim might be said to be founded on mutual credit which entitled the defendant to claim an equitable set-off and to such a claim the Limitation Regulation had no application.

(2) A trustee was at liberty to reimburse himself from the trust property all expenses properly incurred in the execution of the trust.

*Per Ramachandra Rao, J.*—'When the cross demands are so connected in their nature and circumstances as to make it inequitable in the opinion of the Court to subject the defendant to the necessity of a cross suit', the statute says the plea of set-off may be allowed. This connection may be established by reason of mutual credit. "By mutual credit we are to understand a knowledge on both sides of an existing debt due to one party and a credit by the other party, founded on and trusting to such a debt, as a means of discharging it." If there is such a connection between the two independent debts, as stated above, equity

acts upon it and allows a set-off. There is also another kind of set-off which probably is not included in the first sentence of Section 106. "Where the nature of the employment, transaction or dealings *necessarily constitutes an account* consisting of receipts and payments, debts and credits, it is certain that only the balance can be the debt." Accordingly, in a suit between mortgagor and mortgagee, the mortgagor is allowed to set-off the Michavarom due to him against the mortgage amount, though the claim for the Michavarom may be time-barred. We are concerned only with the principle of set-off founded on mutual credit.

To allow a wholly unconnected item of barred debt to be pleaded as a set-off does not appear to be a position which logically follows from the theory of equitable set-off which is certainly not co-extensive with the demands of natural justice, which may require that cross demands 'should compensate each other by deducting the less from the greater'.— **25 T. L. R.,** ***176.***

Fol.—26 T. L. R., 221
(=2 T. L. J., 35).
6 T. L. J., 286.

**10.** When the intention of both parties, *i. e.*, the lender (a tenant of Devaswom lands) and the Devaswom trustee was to keep the loan taken by the trustee as a transaction distinct from the tenancy, the Devaswom cannot be allowed to convert what in fact was a loan into a payment of arrears of rent.

Such arrears may, no doubt, have been set-off in a suit on the bond. This the defendant (trustee) could have done, if he definitely specified the amount of the arrears and paid institution fees on the same as required by law. This he has not done. There is a clear distinction between a payment and a set-off, and though an advance made by a tenant on account of the subject-matter of the demise may be taken to be a part-payment of the rent, and therefore cannot form the subject-matter of a suit by the tenant irrespective of the arrears of rent, that cannot be said of a loan transaction which the parties have agreed to keep distinct from the tenancy account.—

**1 S. D.,** ***23.***

**11.** In a suit for arrears of Michavarom, the defendant claimed credit for a certain sum found to have been overpaid by him in a prior suit which was for arrears up to a certain date.

*Held.*—In the prior suit the defendant did not plead a set-off of the excess payment under Section 106. If he did so and paid Court fees on the same, that would have enabled the Court to "pronounce a final judgment in the same suit, both on the original and the cross claim", as provided in the last para of Section 106. The above phraseology indicates that, in the absence of such plea of set-off, the finding in the judgment would not be final as to the excess amount of the counter-claim.—

**2 S. D.,** ***105.***

**12.** In a suit for the unpaid portion of the purchase-money the defendant contended that by reason of the provision in the sale deed to the effect that the vendor will be liable for any undisclosed encumbrance, he (defendant) is not liable because he had to discharge certain incumbrances upon the property which are not known to the plaintiff.

*Held.*—The defendant had a cross claim against the plaintiff arising out of the same transaction (the sale) which has given rise to the plaintiff's suit for the balance of the purchase-money. Such cross-claims so arising may be set up by a defendant though not pleadable by way of set-off.—

**2 S. D.,** ***119.***

Appr.—18 T. L. J., 266.

**13.** Section 106 of the C. P. C., says that the claim for set-off must be treated as a plaint. The dismissal of the claim for set-off (owing to failure to pay Court fees on the amount pleaded as set-off) is like the

rejection of a plaint under Section 50. As in the latter case, so in the former, the default is one which cannot be cured in appeal.— **2 S. D.,** ***188.***

**14.** One of the points for decision was whether the defendant was entitled to set off against plaintiff's claim the damages alleged to be due to him by plaintiff on account of defect of the title which plaintiff purported to convey under the sale-deed, in respect of the property surrendered.

The defendant could not claim this set-off unless he can claim the amount in a suit for damages.— **3 S. D.,** ***114.***

Ref.—37 T. L. R., 209
(=11 T. L. J., 151).

**15.** The suit was for money due under a document executed by defendant. The suit was dismissed on the ground that defendant's money was with plaintiff. The defendant could not sue for this money which was advanced in furtherance of illegal lottery chitty business; and he did not pay Court fees on the claim of set-off.

*Held.*—Judgment was given for plaintiff for the sum sued for.— **K. P.,** ***135.***

**16.** The plaintiff sued the defendant, an Abkari contractor, for recovery of the salary and cash-deposit due to his father who was employed under the defendant as cash-keeper and had left the service before his death. The defendant contended that, as plaintiff's father had to account for 9,000 and odd Fanams at the time of his leaving defendant's service, he (defendant) had set-off the said cash-deposit and salary in part-payment of the amount due to him. Both the lower Courts thereupon dismissed the suit.

*Held.*—(1) As the sum, if any, remaining unaccounted for and due to defendant by plaintiff's father could be known only after the taking of the accounts of the Jadithypatty book it was not an ascertained sum as defined in Section 106, C. P. C.

(2) The defendant in his written statement could not claim to set-off any amount without paying Court fees on it.

(3) As the counterclaim made in the written statement was beyond the pecuniary jurisdiction of the Munsiff it ought not to have been considered by the lower Courts. **K. P.,** ***379.***

Ref.—18 T. L. J., 266.

**17.** In a suit to recover arrears of Thiruppuvarom, the defendants claimed a set-off of a certain sum of money due from the plaintiff's predecessor in interest. It was urged by the plaintiff that the defendants were not entitled to put forward the plea, as a suit brought to recover the said sum had been dismissed as being barred by limitation.

*Held.*—In respect of debts, the Law of Limitation merely barred the remedy, but did not extinguish the right itself. The defendants, therefore, had the right to set off the debt against the arrears of Thiruppuvarom claimed in the plaint.

The set-off referred to in Section 106 relates only to debts which can be recovered by suit.— **26 T. L. R.,** ***321***
**(=2 T. L. J.,** ***35*****).**

Ref.—16 T. L. J., 431.

**18.** Plaintiff, a trustee of a Devaswom belonging to his Illom, sued for arrears of Thiruppuvarom due to the Devaswom. Defendant pleaded that the Thiruppuvarom was, under an agreement, being set off against the interest due on a hypothecation bond executed by plaintiff's predecessor in respect of a property alleged to belong to the Illom of the plaintiff. The Munsiff and the District Judge found the special agreement proved, but on the question of law they differed. The Munsiff held the discharge pleaded was not valid in law against the Devaswom. The District Judge held the contrary view and dismissed the suit.

*Held* (in second appeal).—(1) The discharge proved was valid and binding on the plaintiff.

2?? ...



(2) It was important in every case that there should be clear evidence that an endowment had been made or a trust created.

(3) The plaintiff failed to prove that there was a real as distinguished from a nominal trust in favour of the Devaswom.

On the other hand, the evidence in the case and the conduct of the parties abundantly showed that the plaintiff's Illom had been treating the property alleged to be Devaswom property as their Illom property and that the plaintiff and his predecessor did not make any distinction between the two.

(4) In cases where the question for determination is whether the property, the subject of dispute, is trust property or the trustee's private property, instances of re-appropriation by the alleged trustee to his own use, if numerous and extending over a long period, will afford good evidence of the trustee's right to the property.

(5) In the case of a private trust, the persons interested in the same have the power or the authority to use the fund for any purpose and to divest the fund from the original object. In the case of a public charitable trust, this cannot be done. As a consequence of this, it follows that the beneficiaries in the case of a private charitable trust may condone mal-administration by trustees. But in the case of a public charitable trust, the mal-administration cannot be so condoned, for the wrong is done to the State, and the trustees will still be liable.—
**5 T. L. J.**, *405*.

**19.** If a definite sum smaller than the sum claimed is named in the acknowledgment, only the sum named is taken out of the Statute of Limitation.—
**32 T. L. R.**, *19*
(= **6 T. L. J.**, *62*).

**20.** To equalise the shares in a partition between two brothers, one brother executed a pro-note in favour of the other for a certain sum. On a suit for the recovery of the amount under the note, the defendants claimed to set-off the value of two ornaments under the following circumstances. One of the ornaments was kept in common to be used by both the brothers but plaintiff was keeping it to himself. Defendant was entitled to half its value. The other was left to the share of defendant but it was already under a pledge made by the plaintiff who was bound under the partition-deed to redeem the pledge. The Munsiff allowed the set-off claimed; but the District Judge on appeal disallowed the claim on the ground that it related to unascertained sums.

*Held* (in second appeal).—No doubt the claim for the value of the two jewels may not strictly be regarded as one for an *ascertained sum of money* within the meaning of Section 106. But the Section is only a rule of procedure in regard to cases of set-off and was not exhaustive of cases in which defendants are entitled to raise such pleas.

The Code was not intended to take away any right of set-off, whether legal or equitable, which parties would have had independently of its provisions. It seems that the right of set-off will be found to exist not only in cases of mutual debts and credits but also where the cross demands arise out of one and the same transaction or are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant be driven to a cross suit."

The cross-demands in the case, as they arose out of the partition arrangement, must be regarded as being so connected in their nature and circumstances as to make it inequitable that the defendant should be driven to a cross suit, and therefore, the defendant was entitled to raise his plea as one for an equitable set-off.— **6 T. L. J.**, *286*.

**21.** The decree directed that, if the plaintiff deposited in Court a lump sum within a certain date, he should be treated as a subscriber by the defendants in their

Chitty, he should be entitled to his costs from the defendants and the defendants should bear their own. Plaintiff deducted the amount due to him as costs and deposited the balance.

*Held.*—The question does not fall under the purview of any of the Sections of the Civil Procedure Code; but in equity he is entitled, while making the deposit, to take credit for the amount of the costs awarded to him by the decree.— **10 T. L. J.**, *91*.

**22.** The suit was for money due (Rs. 96) on a pro-note. The defendant set up by way of set-off or counter-claim against the plaintiff a claim for Rs. 72 and odd which he alleged was due to him on account of dealings between the parties in cocoanuts, &c. The plaintiff contended that the defendant's claim cannot be described as one for an ascertained sum of money.

*Held.*—The defendants' claim is for a definite amount of money on account of his dealings with the plaintiff and is one for an ascertained sum of money falling under Section 106, C. P. C.

It is not disputed that, if the defendant's claim is true, the amount of the claim is legally recoverable from the plaintiff, and it cannot be objected that in the defendant's claim the parties fill a different character from what they fill in the plaintiff's suit. The cross claim falls within the express language of the first part of Section 106; and therefore, under the ordinary law of set-off the defendant may be allowed to advance the money claim against the plaintiff. "When you have got two cross demands of a nature substantially the same and due to and from A and B in the same right, that is to say, when the one is a creditor in his own right and debtor also in his own right to the other, the one debt may be set-off against the other at the option of the party from whom payment is demanded. But it is essential in such cases that the rights should be substantially the same.—

**10 T. L. J.**, *137*.

**23.** In a suit for recovery of leased property with arrears of rent, the plaintiff is entitled to set-off the arrears of rent which are barred by limitation against the value of improvements payable to the defendant.

"The arrears of rent are, at the determination of the tenancy, customarily deducted from the amount due to a tenant by a landlord for improvements effected upon the property, and it is but reasonable and equitable that a landlord who has to recover arrears of rent should not be driven to the necessity of recovering his claim by compulsory process, when the claim can be met out of what is due from him to his tenant. The money invested by a tenant in the improvement of the property of his landlord is customarily a charge on the property and the tenant is, to the extent of his claim for improvements, virtually the holder of an encumbrance on the land, which cannot be resumed or redeemed unless and until the encumbrance is paid off. If so, the equitable principles upon which set-off is allowed, and accounts directed to be taken between the mortgagors and mortgagees would apply to the case of a landlord and tenant having mutual claims against each other" (9 T. L. R., 127).— **11 T. L. J.**, *47*.

**24.** The decree for redemption was in the following terms:—"The plaintiff is allowed to recover the plaint shops and the site on which they stand from the defendants 1 to 4 on payment to defendants 1 and 2 of the balance of the mortgage amount of 8,000 Fanams less the arrears of Michavarom at the rate of Rs. 11½ per month from 25-5-1086 to this date. Future rent at the same rate till the date when the arrears of rent amount to more than 8,000 Fanams from which date future rent will be calculated at the rate of Rs. 40 per mensem. Arrears of rent to be payable by the defendants 1 and 2, who will pay the costs of the plaintiff. The defendants will suffer their own costs. Interest on costs at 6 per cent."

Plaintiff claimed the right to set-off the amount of costs payable to him under the decree against the mortgage amount payable by him.

*Held.*—He is not entitled to claim the set-off. Neither Section 216 [ =Or. XX, r. 6 (3) ] nor 248 [ = Or. XXI, r. 17 ] of the Civil Procedure Code applies to the facts of the case.— **11 T. L. J.,** *398.*

Ref.—19 T. L. J., 459.
19 T. L. J., 519.

**25.** One G. K., who had started a Chitty scheme was adjudicated an insolvent, and the plaintiff was appointed Receiver in insolvency. The defendant, who was a subscriber to the Chitty, had prized one-half of her ticket at the fifth drawing. On the allegation that the defendant had defaulted to pay the subscriptions from the 6th drawing, the plaintiff as Receiver brought the suit to recover in a lump the future subscriptions due in respect of the prized half ticket. The defendant claimed that she had the right under Section 29 of the Insolvency Regulation to set-off the amount of the paid up subscriptions in respect of her unprized half ticket against the amount due from her on her prized half-ticket. The lower Court disallowed the claim for set-off as unsustainable. The defendant appealed to the High Court.

It was admitted before the High Court that, when the suit was disposed of by the lower Court, no application had been made by the defendant under the provisions of the Insolvency Regulation for proof of the debt alleged to be due to her from the insolvent.

The appeal was referred to a Full Bench for disposal.

*Held.*—It was not necessary to decide at that stage whether the statutory right of set-off allowed by Section 29 of the Insolvency Regulation was or was not available to the defendant. Assuming that the right was available to the defendant, it was essential for claiming that right that the defendant should be 'a creditor proving or claiming to prove a debt under the Regulation.' When the suit was before the lower Court, the defendant had not satisfied this contention; and, consequently, that Court was right in disallowing the claim for set-off. (F. B.).— **12 T. L. J.,** *154.*

**26.** (1) A defendant cannot maintain a counter-claim in respect of a matter for which he could not, as plaintiff, maintain an independent action; and consequently upon a barred claim set up by the counter-claim, the defendant cannot be given a decree.

Section 106 expressly authorises the Court to enquire into claims by way of equitable set-off also ; and it provides that such set-off shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original and on the cross claim. The Section affords, with a view to avoid circuity of actions, statutory sanction for a cross action to be brought and tried at the same time as the original action. It is a legal proceeding commenced by the defendant, which for purposes of procedure is allowed to be tried together with the original action. He occupies the position of a plaintiff in respect of his counter-claim, and it is difficult to see how the original plaintiff can be precluded from setting up the defence of the statute of limitation as well as any other defence to the attack of the defendant who uses his counter-claim not only as a shield but as a sword. It does not seem right or proper that the defendant should be allowed to evade the statute of limitation merely because the plaintiff has filed a suit against him. "Under Or. VII, r. 6 of the Code of Civil Procedure, a set-off is not permissible if the money is not legally recoverable. This would include all unsustainable claims, whether barred by limitation or otherwise. It is no doubt true that this rule applies in terms only to what is known as legal set-off. Although in this country, it has been held in numerous cases that the Code of Civil Procedure

does not prevent the defendant from claiming an equitable set-off in respect of unliquidated damages claimable in connection with the transaction on which the suit is brought, I think that on the principle that equity follows the law, the plea will be available only in respect of sums legally recoverable. * * 'For when the Legislature had fixed the time at law, it would have been preposterous for equity (which by its own proper authority always maintained a limitation) to countenance laches beyond the period that law had been confined to by Parliament. And, therefore, in all cases where the legal right has been barred by Parliament, the equitable right to the same thing has been concluded by the same bar.' 'It is said that Courts of equity are not within the statutes of limitation. It is a mistake in point of language to say that Courts of Equity act merely by analogy to the statutes; they act in obedience to them. Courts of Equity are bound to yield obedience to the Statute of Limitations upon all legal titles and legal demands, and cannot act contrary to the spirit of its provisions.' I am therefore of opinion that, as the defendant's claim was barred by limitation, the plea of equitable set-off was not open to him." (39 Mad., 939).

(2) A suit for the recovery of a specific sum of money does not assume the character of a suit for accounts in the technical sense of that expression, merely because in the determination of the question in controversy accounts may have to be examined.

(3) It is of the essence of a suit for accounts that the defendant should be under a liability to render accounts to the plaintiff.

(4) A suit for accounts is an action for the balance that may be found due on taking the accounts between the parties; and in such an action, the plaintiff applies by his plaint to have an account taken in order that adequate relief may be granted to him. It necessarily involves the taking of accounts, and the law provides a special procedure to be followed in such actions (F. B.).— **39 T. L. R.,** *135* (= **13 T. L. J.,** *46*).

Ref.—18 T. L. J., 167.

**27.** The suit was on a bond executed by the defendant in plaintiff's favour on account of the prize amount due to the plaintiff as a prized subscriber in the defendant's Chitty. The defendant made a counter-claim on the basis of a security bond executed by the plaintiff in defendant's favour to secure due payment of the future subscriptions in another Chitty conducted by the defendant to which also the plaintiff was a subscriber. The plaintiff had also offered the plaint bond as collateral security for the payment of the said subscriptions.

The Munsiff held that the defendant's counter claim was barred by limitation and decreed the suit as prayed for.

The District Judge held that the defendant could be allowed an equitable set-off to the extent of the plaintiff's claim, and accordingly dismissed both the suit and the counter claim.

*Held* (in special appeal).—The decree of the District Judge should be upheld. Even on the assumption that a suit on the security bond would be barred, there was nothing to prevent the defendant from pleading an equitable set-off in respect of the amount due under the security bond, at least to the extent of the plaintiff's claim. In respect of debts, the law of limitation barred only the remedy, but did not extinguish the right. In the case under consideration, there was the further circumstance that the plaint bond was given as a collateral security for the due payment of the amount due under the security bond. The transactions were therefore so intimately connected that it would be inequitable to deny to the defendant the right to set-off the amount due to him against the amount due by him.— **16 T. L. J.,** *431.*

**28.** A counter-claim cannot be taken into account in determining the jurisdiction

Defence or set-off founded on separate grounds.

7. Where the defendant relies upon several distinct grounds of defence or set-off founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly.

---

of a Court to entertain a suit. The valuation of the suit made in the plaint in the light of the averments made and reliefs claimed in the plaint alone need be looked into to decide questions relating to jurisdiction.— **18 T. L. J.,** *73.*

**29.** A plea of payment refers to a satisfaction or extinguishment already had prior to the raising of the defence. It is essential in the case of such a plea that payment set up should have been made after the liability that forms the subject-matter of the claim in the suit came into existence. A claim of set-off is virtually a prayer for satisfaction or extinguishment of the liability to be declared by the Court after the date of the plea itself on a future date and not one effected already prior to the date of the plea as in the case of a plea of payment.— **18 T. L. J.,** *167.*

**30.** If a set-off is pleaded, Court fee has to be paid under Article 1 of the Court Fees Regulation of 1087, irrespective of its being a "legal" set-off or an "equitable" set-off.

A plea of set-off has to be distinguished from a plea of payment. While the latter refers to a satisfaction of the debt that forms the subject-matter of the suit *prior* to the raising of the defence and its consequent extinguishment before that date, the help of the Court is invoked in the former case and the debt in question required to be *thereafter* declared to have become extinguished in whole or *pro tanto* against another debt or ascertained sum due to the defendant from the plaintiff.

In cases where a higher amount than that claimed by the plaintiff in the suit is pleaded and claimed, the same is technically known as a counterclaim. It is virtually a weapon of offence which entitles a defendant to enforce a claim against the plaintiff as effectually as in an independent action.— **18 T. L. J.,** *266.*

**31.** It is well established that Section 106 does not take away any rights of equitable set-off which parties would have independent of it, and in the matter of equitable set-off, the bar of limitation does not arise. Though it is not easy to state precisely under what circumstances equitable set-off can be allowed, the principle may be enunciated thus :—'The right of set-off exists not only in cases of mutual debts and credits, but also where cross demands arise out of the *same transaction* or are *so connected with each other* as to make it inequitable that the plaintiff should recover and the defendant should be driven to a cross-suit.'

In applying the principle, Courts should not construe the principle over-rigidly against the defendant.

A set-off will be legally recoverable under Section 106, if the amount was recoverable in a separate suit at the time when the plaintiff institutes the suit. It need not be legally recoverable at the time the written statement is put in. This is so because the right to set-off arises when the suit is filed (F. B.).— **19 T. L. J.,** *702.*

---

**Or. VIII, r. 7** [= „ = *Or. VIII, r. 7* = En. Or. 20, *r.* 7]

See Order VII, Rule 8, for a similar Rule.

---

8. Any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off may be raised by the defendant or plaintiff, as the case may be, in his written statement.

New ground of defence.

9. No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.

Subsequent pleadings.

10. When any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

Procedure when party fails to present written statement called for by Court.

---

**Or. VIII, r. 8** [=„ = *Or. VIII, r. 8*]

**Or. VIII, r. 9** [=S. 107 = *Or. VIII, r. 9*]

Section 107 of Regulation II of 1065 ran as follows :—

"107. *No written statement to be received after first hearing.*—Except as provided in the last preceding Section, no written statement shall be received after the first hearing of the suit :

Provided that the Court may at any time require a written statement, or additional written statement, from any of the parties, and fix a time for presenting the same :

Provided also that a written statement, or an additional written statement, may, with the permission of the Court, be received at any time for the purpose of answering written statements so required and presented."

**Or. VIII, r. 10** [=S. 108=*Or. VIII, r. 10*]

I. The words "may pronounce judgment" have been substituted for the words "may pass a decree" occurring in Section 108 of the old Regulation.

II. An appeal lies from an order under this Rule pronouncing judgment against a party.

## ORDER IX.

### Appearance of Parties and Consequence of Non-appearance.

Parties to appear on day fixed in summons for defendant to appear and answer.

1. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court.

Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs.

2. Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, the Court may make an order that the suit be dismissed:

Provided that no such order shall be made although the summons has not been served upon the defendant, if on the day fixed for him to appear and answer he attends in person or by agent when he is allowed to appear by agent.

---

**Order IX:** 1. Section 584, Paragraph 1 of the old Civil Procedure Code [new Section 105] should not be so construed as to make the procedure laid down in Chapter VIII—Sections 90 to 104 [ = Rules 1 to 14 of this Order ] always applicable to all execution procedings.— **35 T. L. R., *75*.**

Fol.—19 T. L. J., 368.

**2.** Rules 1 to 14 of Order IX are inapplicable to execution proceedings.

The provisions of Section 105 cannot warrant the application of the provisions of Order IX, Rules 1 to 14, to execution proceedings, as they cannot be considered to be suits within the meaning of the Section. **19 T. L. J., *368*.**

**3.** The expression "appear and appearance" occurring in Chapter VII of the Code of 1065, corresponding to the various Rules in Order IX, and Section 152 [ =Or. XVII, r. 2 ] refer to appearance either (1) by the defendant in person, or (2) by a pleader duly instructed, or (3) by a recognised agent as defined in Section 33 [ Or. III, r. 2 ], or (4) by a co-defendant who has been authorised to appear, plead or act for the defendant in question under Section 31 [ Or. I, r. 12 (1) ].— **19 T. L. J., *643*.**

**Or. IX, r. 1** [ = S. 90 = *Or. IX, r. 1* ]

**Or. IX, r. 2** [ = S. 91 = *Or. IX, r. 2* ]

I. The words "or postal charges (if any)" are new.

II. For the plaintiff's remedy in case of dismissal, see Rule 4 *Infra*.

When neither party appears, suit to be dismissed.

**3. Where neither party appears when the suit is called on for hearing, the Court may make an order that the suit be dismissed.**

---

**Or. IX, r. 3** [ = S. 92 = *Or. IX, r. 3* ]

I. The corresponding Section of the old Regulation was as follows:—

"92. *If neither party appears, suit to be dismissed.*—If, on the day fixed for the defendant to appear and answer, or on any other subsequent day to which the hearing of the suit is adjourned, neither party appears, the suit shall be dismissed, unless the Judge, for reasons to be recorded under his hand, otherwise directs."

II. The words "may make an order that the suit be dismissed" are used to 'make it clear that the dismissal under this Rule is not a decree, but an order.'

III. See also Rules 9 and 13.

**Case Law.**

1. Plaintiff sued for recovery of her father's one-fifth share of the plaint properties, alleging she was the heir of her deceased father. During the pendency of the suit, she died, and the Munsiff, in ignorance of her death, dismissed the suit on the ground that neither the plaintiff nor the defendant was present.

It was contended that the order dismissing the suit should have been regarded as one passed under Section 92.

*Held.*—The order dismissing the suit should be regarded as an order of abatement under Section 350 [=Or. XXII, r. 3 (2)]. Section 92 which deals with cases of non-appearance of parties cannot be held to apply. "It requires no words to show the inapplicability of rules or orders dealing with the case of the non-appearance of a suitor to the situation which arises when the suitor is dead. The principle of forfeiture of rights in consequence of a default in procedure by a party to a cause, is a principle of punishment in respect of such default, but the punishment of the dead or the ranking of death under the category of default, does not seem to be very stateable."—
**35 T. L. R.,** *80.*

2. The non-appearance of the appellant in person on the day fixed and his Vakil's submission that he had no instructions, make it obligatory on the Court to abstain from disposing of the case on the merits. Under the circumstances, the Court should deal with the case under the provisions of the law relating to default of appearance.—
**13 T. L. J.,** *101.*

Fol.—15 T. L. J., 368.

3. When there is a failure of appearance on the part of one or both parties, the Court should, under Order XVII, Rule 2, proceed to dispose of the case in one or other of the methods provided for in Order IX. Therefore, the operation of Order XVII, Rule 3, would be excluded in such a case. If the plaintiff were the party who failed to appear, the Court in disposing of the case would have to do so under Order IX, Rule 3 or 8, according to whether defendant appears or not. In either case, the plaintiff is entitled to move the Court to set aside the order of dismissal. The mere fact that the Court has purported to pass a decree on the merits under Order XVII, Rule 3, will not alter the position of the plaintiff.

Where the Counsel appears only for the purpose of applying for an adjournment or where he states that he has no instructions, the party cannot be said to appear by counsel, and where the party is only present in Court on such an occasion, he cannot be said to appear in person.

"The word 'appearance', as used in the Code, has a well-recognised meaning and implies that the party is present at the trial either in person or through a pleader properly authorised on his behalf or through a

4. Where a suit is dismissed under Rule 2 or Rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or, he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his not paying the court-fee and postal charges (if any) required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

Plaintiff may bring fresh suit or Court may restore suit to file.

5. (1) Where, after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails for a period of one year from the date of the return made to the Court by the officer ordinarily certifying to the Court returns made by the serving officers, to apply for the issue of a fresh summons and to satisfy the Court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that such defendant is avoiding service of process, the Court may make an order that the suit be dismissed as against such defendant.

Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons.

(2) In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

---

recognised agent under Order III, Rule 1, or through a co-party under Order I, Rule 12; but in either case, the party or the person authorised on his behalf must be present for the purpose of conducting the case. The mere presence of the party, unless he is there for that purpose, is not an appearance within the meaning of the Rules, nor does the presence of his pleader who has been instructed to represent him on previous occasion, constitutes an appearance unless he is instructed to represent him on the occasion in question and attends for that purpose." (69 I. C., 837).—

**19 T. L. J., 421.**

Ref.—45 T. L. R., 291.

**Or. IX, r. 4** [= S. 93 = *Or. IX, r. 4*]

The words "and postal charges (if any)" are new. The words "within the time fixed before the issue of summons" have been substituted for the words "within the time allowed for the service of the summons" which occurred in the old Section.

**Case Law.**

1. An order restoring a suit to file, with or without conditions, is an interlocutory order, and it can be questioned only in an appeal preferred against the final decision of the suit. The fact of an order being wholly or partially illegal does not confer jurisdiction upon a Court to hear appeals against orders not specially appealable.—

**7 T. L. R. App., 53.**

2. A party whose application of a miscellaneous nature is dismissed for default is entitled to apply for a retrial under Section 108 of the old Code. The procedure in miscellaneous cases is to be the same in both

suits and other miscellaneous proceedings; and if so, the Section (108) applies to proceedings as well, besides suits. [For Section 108 referred to, see Rule 6 *Infra*].—

**8 T. L. R. App., *40*.**

**3.** Where a suit in which issues have been recorded and a date fixed by the Court, of its own motion, for production of evidence, is dismissed on plaintiff's defaulting to appear on that date, its restoration to the file is not irregular. The dismissal could not be treated as one on the merits, and the order for restoring the case on an application cannot be found fault with.—

**10 T. L. R., *151*.**

---

**Or. IX, r. 5** [ = S. 94 = *Or. IX, r. 5* ]

I. Section 94 of Regulation II of 1065 was as follows:—"94. If, after a summons has been issued to the defendant or to one of several defendants and returned unserved, the plaintiff fails for a period of 6 months from such return to apply for the issue of a fresh summons and to satisfy the Court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that such defendant is avoiding service of process, the Court may dismiss the suit as against such defendant.

In such case the plaintiff may (subject to the Law of Limitation) bring a fresh suit."

The above Section corresponded to Section 99-A of the Indian Code of 1882 in which the period allowed for applying for the issue of a fresh summons was one year. In adopting that Section, the period was reduced, and the Statement of Objects and Reasons said:—"One year seems to be too long a period for a plaintiff to ascertain the whereabouts of the defendant to enable him to apply for the issue of a fresh summons. 6 months seem to be amply sufficient, and Section 99-A is amended accordingly."—

*S. O & R, Para 16.*

II. The present Rule reproduces the corresponding Rule of the Indian Code of 1908, in which the period allowed for applying for the issue of fresh summons was one year. That Rule has since been amended by Act XXIV of 1920, and the Rule now runs as follows:—

"5. (1) Where, after a summons............ fails for a period of *three months* from the date........issue of a fresh summons, the Court shall make an order that the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the Court that—

(*a*) he has failed after using his best endeavours to discover the residence of the defendant who has not been served, or

(*b*) such defendant is avoiding service of process, or

(*c*) there is any other sufficient cause for extending the time,

in which case the Court may extend the time for making such application for such period as it thinks fit.

(2) In such case...........bring a fresh suit."

III. For the words "make an order that the suit be dismissed," see under Rule 3 above.

IV. It may be noted that an order for abatement under Order XXII, Rule 4, may, by virtue of Article 162 of the Limitation Regulation, be made within ninety days.

**Case Law.**

See Or. IX, r. 4.— **8 T. L. R. App., *40*.**

---

6. (1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then—

Procedure when only plaintiff appears.

(a) if it is proved that the summons was duly served, the Court may proceed *ex parte*;

When summons duly served.

(b) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant:

When summons not duly served.

(c) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

When summons served, but not in due time.

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement.

---

**Or. IX, r. 6** [= S. 95 = *Or. IX, r. 6*]

I. 1. The words "when the suit is called on for hearing, then" have been substituted for the words "the procedure shall be as follows" which occurred in Section 95 of the old Regulation.

2. In Sub-Rule (2), the words "was not duly served or" after the word "summons" are an addition not found in the corresponding second para of the old Section.

II. For Form of Notice to defendant, see Appendix B, Form No. 11.

**Case Law.**

1. On the day fixed in the summons for hearing, the defendant appeared and applied for an adjournment; but on the date to which the hearing was so adjourned, he failed to appear in person or by Vakil. The Judge treated him *ex parte*.

The default of a defendant to appear on the day to which the hearing of a case is adjourned, falls under Section 100 of the Civil Procedure Code (Regn. II of 1087) in the same way as his default to appear on the day named in the original summons. To bring a case under that Section, the hearing may be either on the day named in the summons or a subsequent day to which the first hearing might have been adjourned.

No appeal under Section 108 of the (old) Civil Procedure Code, therefore, lay by a defendant who was treated as *ex parte* by a Court under such circumstances.—

**3 T. L. R., 32.**

[Sections 100 and 108 of Regulation II of 1087 referred to above were as follow :—

"100. If the plaintiff shall appear in person or by a pleader and the defendant shall not appear in person or by a pleader, and it shall be proved to the satisfaction of the

Court that the summons was duly served, the Court shall proceed to hear the suit *ex parte*. If the defendant appear on any subsequent day to which the hearing of the suit is adjourned and shall assign good and sufficient cause for his previous non-appearance, he may, upon such terms as the Court may direct as to payment of the costs or otherwise, be heard in answer to the suit in like manner as if he had appeared on the day fixed for his appearance.

"108. No appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance. But in all cases in which judgment may be passed *ex parte* against a defendant, he may apply, within a reasonable time, not exceeding thirty days after any process for enforcing the judgment has been executed, to the Court by which the judgment was passed, for an order to set it aside; and if it shall be proved to the satisfaction of the Court that the summons was not duly served, or that the defendant was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the judgment and shall appoint a day for proceeding with the suit. In all cases of judgment against a plaintiff by default, he may apply, within thirty days from the date of the judgment, for an order to set it aside; and if it shall be proved to the satisfaction of the Court that the plaintiff was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the judgment by default, and shall appoint a day for proceeding with the suit. But no judgment shall be set aside on any such application as aforesaid, unless notice thereof have been served on the opposite party. In all cases in which the Court shall pass an order under this Section for setting aside a judgment, the order shall be final; but in all appealable cases in which the Court shall reject the application, an appeal shall lie from the order of rejection to the tribunal to which the final decision in the suit would be appealable, provided that the appeal be preferred within the time allowed for an appeal from such final decision."]

2. The Sirkar, who was defendant in a suit, was declared *ex parte* by the District Judge on the ground that no written statement was filed. The Sirkar Vakil was present in Court.

*Held*.—A suit cannot be declared *ex parte* when the opposite party has put in an appearance though he might not have filed a written statement.— **14 T. L. R., *100*.**

3. Section 95, C. P. C., is not controlled by Section 101 [=Or. IX, r. 11], and where there are several defendants and some alone do not appear, they can be declared *ex parte* under Section 95.

"It is said that Section 103 [ = Or. IX, r. 13] has no application to the case of one of several defendants, and that that Section only applies to the case of a sole defendant or to a case where there are several defendants all of whom have not appeared. I cannot accept this interpretation of the Section. I do not see why because a defendant happens to be one of many, he is less 'a defendant' within the meaning of that Section. If the petitioner's contention were to prevail, the result would be that if there be one defendant out of many against whom a decree has been passed *ex parte*, he would be deprived of the benefit of the Section. There is nothing in Section 101 [ = Or. IX, r. 11] which conflicts with Section 103, nor is there anything in Section 101 which limits the operation of Section 103 in the way suggested by the petitioner."

Of course, the defendant declared *ex parte* may appear subsequently and apply for setting aside the *ex parte* order. It wi[ll] then be for the Court to consider whe[ther] such an application would be grante[d] any rate the *ex parte* orde[r] passe[d] lower Court was not illegal or [...] the provisions of the Code.—

12

Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.

7. Where the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

---

4. A non-contesting defendant may appeal from a decree made against him; but by so appealing he is not relegated to the position of a contesting defendant, who is entitled to an adjudication on the merits of the controversy between the parties.—

**15 T. L. J.,** *322.*

5. On the day the case stood posted for final hearing in the lower Court, the Vakil for the defendant informed the Court that he had no instructions. The Court heard the case and passed a decree against the defendant.

The defendant applied to the Court for an order setting aside the decree and reopening the case on the ground that the decree was one passed for default of appearance under Section 152 C. P. C. [= Or. XVII, r. 2].

The Court refused the application on the ground that the decree was one passed on the merits.

*Held.*—The order of the lower Court was wrong.

Appearance by a Vakil who has no instructions is tantamount to non-appearance. Therefore, there was in the eye of the law no appearance for the appellant on the day on which the final arguments were heard. There can be no doubt that the hearing of a suit includes the hearing of the final arguments. Very often that is the most important stage of the hearing of a suit. A judgment pronounced without the hearing of arguments is liable to be set aside as ... law. The non-appearance of the ... the final hearing is sufficient to ... non-appearance at the hearing ... meaning of Section 95, though the party might have appeared at the prior stage of the suit. It follows therefore that there was no appearance for the appellant when the suit was heard in the lower Court.

As regards the interpretation of Sections 152 and 153, C. P. C. [= Or. XVII, rr. 2 & 3], according to the view taken in 13 T. L. J., 101 and 207, the decision under consideration must be treated as one passed under Section 152 read with Section 95. The application of the appellant under Section 103 was therefore competent.—**15 T. L. J.,** *368.*

6. See also—

Or. XLV, r. 7,—**18 T. L. R.,** *167.*

---

**Or. IX, r. 7** [= S. 96 = *Or. IX, r. 7*]

**Case Law.**

1. A petition was put in by the defendant praying to be heard after he had been declared *ex parte*. The petition was not to set aside any decree passed in the suit, but to obtain permission to defend the suit before the decree was passed or judgment pronounced. The Zillah Judge dismissed the petition for default.

*Held.*—The proper Section applicable to the case was Section 96, C. P. C., and not Section 103 [=Or. IX, r. 13]. There is an appeal against an order under Section 103, but no appeal against an order passed under Section 96. Nor could the appeal be treated as a revision petition under Section 568 [new Section 89]. No revision petition lies when the party has other remedies open to him. The party could apply under Section 103 to set aside the *ex parte* decree subsequently

Procedure where defendant only appears.

8. Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

---

passed, and he has also the right to appeal against the decree itself.— **2 S. D.**, *247.*

**2.** See also—

Or. IX, r. 13,—**9 T. L. J.**, *95.*
**10 T. L. J.**, *269.*

---

**O. IX, r. 8** [= S. 97 = *Or. IX, r. 8*]

I. Section 97 of Regulation II of 1065 was as follows:—

"97. If the defendant appears and the plaintiff does not appear, the Court shall dismiss the suit, unless the defendant admits......to the remainder."

II. For the words "make an order that the suit be dismissed", see under Rule 3 above.

### Case Law.

**1.** An order dismissing a suit at an adjourned hearing for non-appearance of the plaintiff or his Vakil is an order under Section 152 C. P. C., [=Or. XVII, r. 2] and its consequential Section 97, and not under Section 153 [=Or. XVII, r. 3], and is appealable.

If the plaintiff had put in any appearance in person or by pleader, his default in producing the evidence might have been a reason for decision under Section 153.—
**22 T. L. R.**, *262.*

Dist.—25 T. L. R., 83.
14 T. L. J., 410.
Fol.— 38 T. L. R., 122
(=18 T. L. J., 204).
Diss.—4 S. D., 261.

[See Sec. 2 (2) and Or. XLII, r. 1]

**2.** The suit was for recovery of property trespassed upon by defendants, with damages. Issues were settled and evidence, oral and documentary, was produced by both parties. On an adjourned date, the case was dismissed for default of plaintiff's appearance apparently under Section 152, C. P. C. [=Or. XVII, r. 2]. The plaintiff's appeal was also dismissed.

*Held.*—The dismissal of the case for plaintiff's default when the Munsiff ought to have decided it on the evidence before him would be a denial of justice. Case remanded for disposal according to law.

A default made on an adjourned hearing may occur under two different stages of circumstances—(1) where the plaintiff has produced no evidence whatever, and (2) where he has produced his evidence. In the former case, the trying Judge could have applied the peremptory provisions of Section 97 by force of the earlier part of Section 152; and even in such cases the order of dismissal for default is appealable.

In the second class of cases, the question arises whether the Munsiff was bound to dismiss the case under Section 97 or ought to have decided it on the evidence befo[re] him. To dismiss the case would be a gr[oss] injustice.— **4 S. D.**

**3.** See also—

Sec. 89,— **K. P.**, *236.*
Or. IX, r. 3.—**13 T. L. J.**
**19 T. L.**
" " r. 4.—**7 T. L.**
" " r. 6.—**15 T.**
" " r. 9.—**16**

Decree against plaintiff by default bars fresh suit.

9. (1) Where a suit is wholly or partly dismissed under Rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this Rule unless notice of the application has been served on the opposite party.

---

**Or. IX, r. 9** [ = S. 98 = *Or. IX, r. 9*]

The corresponding Section of Regulation II of 1065 was as follows :—"98. When a suit is.........the dismissal aside, and if it be proved that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall set aside the dismissal..........with the suit.

No order.........notice in writing of.........party."

**Case Law.**

**1.** An application made in the Munsiff's Court to conduct a suit *in forma pauperis* was dismissed for default. A subsequent application for review was also dismissed. In these circumstances, Section 98, read along with Section 584 [new Section 105], will operate as a bar to an application to conduct a suit for the same relief before the District Court *in forma pauperis*.—
**13 T. L. J., *353*.**

**2.** A junior member of a Tarwad sued to set aside a sale deed executed by some of the defendants, the senior members. The suit stood posted for settlement of issues. Subsequently, the plaintiff filed a petition stating that he withdrew from the suit as he was satisfied that the deed was executed for consideration and Tarwad necessity. Another junior member put in a revision petition under Sections 97 and 98 praying that the suit might be restored to the file and that she might be permitted to go on with the suit, as the plaintiff who sued on her behalf also had fraudulently withdrawn from the suit in collusion with the defendants. The Munsiff dismissed the petition.

*Held*.—A person not a party to the suit cannot apply for restoration under Section 98. That Section provides for cases where a plaintiff may apply for an order to set aside the dismissal of the suit, when a suit is wholly or partially dismissed under Section 97 [ = Or. IX, r. 8] for default of appearance of the plaintiff. Section 98 can by no stretch of language be made applicable to the facts of this suit. The suit was dismissed, not on account of default of appearance of the plaintiff, but because the only plaintiff in the suit petitioned requesting that the suit might be struck off.

The principle that, when a suit is instituted on behalf of a Malabar Tarwad to cancel an alienation by the Karanavan, it is not competent for the plaintiff to withdraw the suit when the other members of the Tarwad oppose the withdrawal on the ground that the withdrawal is prejudicial to the interests of the Tarwad, is not applicable to the facts of this case, as the petitioner put in her petition only *after* the plaintiff's withdrawal petition was allowed and the suit dismissed. The petitioner's remedy after dismissal of the suit does not lie under Section 98.

Procedure in case of non-attendance of one or more of several plaintiffs.

10. Where there are more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, or make such order as it thinks fit.

Procedure in case of non-attendance of one or more of several defendants.

11. Where there are more defendants than one, and one or more of them appear and the others do not appear, the suit shall proceed, and the Court shall, at the time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

12. Where a plaintiff or defendant, who has been ordered to appear in person, does not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing Rules applicable to plaintiffs and defendants, respectively, who do not appear.

---

Review under Section 569 [new Section 88] is the appropriate remedy, if the petitioner was constructively a party to the suit and the suit was filed by the plaintiff on her behalf also. The Court has inherent power to right a wrong, but such powers could be exercised only when no other remedies are open to the petitioner.—
**16 T. L. J.**, *71.*

3. An application under Order IX, Rule 9, need not be by all the plaintiffs, where there are more than one. This cannot be the true interpretation of the word "plaintiff" occurring in the Rule. The better interpretation is "the plaintiff, if there is one, or any one or more of the plaintiffs, if there are two or more." This view is in accordance with justice, as otherwise the claims of several plaintiffs might be defeated by the collusion of one of them with the defendant.— **45 T. L. R.**, *1*
(= **19 T. L. J.**, *207*).

4. See also.—
Sec. 89. —**K. P.**, *236.*
**41 T. L. R.**, *257*
(=**16 T. L. J.**, *29*).
Or. 17, r. 2.—
**38 T. L. R.**, *132*
(=**13 T. L. J.**, *204*).

**Or. IX, r. 10** [= S. 100= *Or. IX, r. 10* ]

**Or. IX, r. 11** [= S. 101 = *Or. IX, r. 11*]

**Case Law.**

See, Or. IX, r. 6.—**12 T. L. J.**, *151.*
„ „ r. 13.—**K. P.**, *556.*

**Or. IX, r. 12** [= S. 102 = *Or. IX, r. 12*]

I. Section 102 of the old Regulation ran thus :—

"102. If a plaintiff or defendant who has been ordered to appear in person under the

*Setting aside Decrees ex parte.*

Setting aside decrees *ex parte* against defendant.

13. (1) In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only, it may be set aside as against all or any of the other defendants also.

(2) The provisions of Section 5 of the Limitation Regulation, 1100, shall apply to applications under Sub-rule (1).

---

provisions of Section 62 or 416, does not appear.........who do not appear.''

The Sections referred to correspond to Order V, Rule 3, and Order XXIX, Rule 3, respectively.

II. This Rule applies to all cases where a party has been ordered to appear in person and fails to do so.

---

**Or. IX, r. 13** [=S. 103 = *Or. IX, r. 13*]

I. "Power is expressly given in Rule 13 of Order IX to set aside an *ex parte* decree against defendants not applying to do so, in cases where such a course is unavoidable; this power, however, is now exercised as a matter of practice settled by judicial authority."— *Notes on Clauses.*

II. Section 103 of Regulation II of 1065 ran as follows:—

"103. In any case...called on for hearing the Court shall pass an order to set aside the decree upon such terms......with the suit."

The Proviso and Sub-Rule (2) are additions.

III. The Rule adopts the wording of the corresponding Rule in the British Indian Code, in regard to which the Indian Special Committee said:—"The Committee have inserted words to make it clear that a decree can only be set aside in favour of a defendant against whom the decree has been passed *ex parte*. There is some conflict of judicial authority upon this point, and the Committee think that the matter should be set at rest in this sense."

The Indian Select Committee, in reporting on the Bill, thought it "necessary to provide specially for cases in which it may not be possible to set aside the decree as against the applicant only." Accordingly, they added the Proviso.

IV. Sub-Rule (2) is an addition made by the Select Committee, and is not found in the British Indian Rule.

**Case Law.**

1. As it was difficult to say whether the defendant had notice of the adjournment or not, the benefit of the doubt was given him and the *ex parte* judgment against him set aside.— **1 T. L. R.,** *29.*

**2.** A party whose application of a miscellaneous nature is dismissed for default is entitled to apply for a retrial.—

**8 T. L. R. App.,** *40.*

**3.** Certain immovable property belonging to the plaintiff was sold in execution of an *ex parte* decree obtained against him. It is alleged that he had no notice of the suit, nor of the attachment and sale, and that the *ex parte* decree and execution proceedings were fraudulent. He sues to recover the property so sold, but does not seek for any relief as regards the decree.

*Held.*—(1) The omission to seek for cancellation of the decree is fatal to the relief sought for, and the validity of the decree cannot, in the circumstances of the case, be considered even incidentally. A party to a decree cannot treat it as mere waste paper. So far as he is concerned, the decree is the paramount authority for the proceedings taken under it. While it remains in force, no proceedings taken under it is, as a rule, open to objection.

(2) The remedy for a party injured by an *ex parte* decree, is by an application to the Court that passad it, to set it aside, and not by a fresh litigation. The expiry of the period allowed for making such an application, will not warrant the institution of a regular suit.

The Code of Civil Procedure contains express and special provisions for the cancellation, on the application of the defendant, of the *ex parte* decree on the ground of want of notice of the suit in which it was passed. The object of these provisions is to enable a party injured by an *ex parte* decree to obtain redress without the cost of a fresh litigation and to avoid multiplicity of suits. The policy of the law is to compel parties to a litigation to seek redress in respect of any wrong done to them by the abuse of legal proceedings, by means of an application to the Court under whose authority the proceedings were taken.

(3) The Civil Procedure Code prohibits the institution of a regular suit to set aside a sale held in execution of a decree, by a party to the proceedings on the ground of irregularity (F. B.).— **10 T. L. R.,** *4.*

Dist.—17 T. L. R., 143.

**4.** An *ex parte* decree that has been set aside is not revived by a second decree being passed in the same terms, but is replaced or superseded by the second decree. It is from the date of the second decree that limitation will run for the purpose of execution, and all proceedings taken on or in respect of the first must be considered as cancelled by the order setting it aside.—

**13 T. L. R.,** *122.*

Ref.—28 T. L. R., 151
( = 3 T. L. J., 128).

**5.** A revision petition does not lie from an order passed by a Munsiff setting aside an *ex parte* decree. The petitioner will have a remedy if the fresh decree to be passed is prejudicial to him.—

**15 T. L. R. App.,** *56.*

Ref.—2 S. D., 247.

Appr.—17 T. L. R. App., 1.

**6.** A obtained in Kumbhom 1073 a decree *ex parte* against B and, in execution thereof, got his properties sold. B, alleging that he came to know of the decree and execution proceedings only in Chingom 1075, applied for a review of the judgment. The District Munsiff rejected the application. B applied for revision of the said order. It was contended on behalf of the respondent, that the High Court had no revisional jurisdiction in this matter, as he had another remedy open to him, *viz.*, that of a regular suit, to set aside the *ex parte* decree on the ground of fraud.

*Held.*—In a case like this, the High Court has revisional jurisdiction under Section 568 of the Civil Procedure Code [new Section 89]; and an *ex parte* defendant might apply for a review under Section 569 [new Section 88] of the Code without resorting to the remedy under Section 108, both remedies being concurrent and a party may elect either course of action.

The defendant had no knowledge of the suit and of the execution proceedings. No effort was made to effect personal service. The words "for any other sufficient cause" in Clause (c) of Section 569 mean that the reason must be one sufficient to the Court to whom the application for review is made. The order is set aside under Section 568 the language of which is wider than and different from that of Section 622 of the Indian Code.— **16 T. L. R. App.**, *29.*

Ref.—2 S. D., 240.

**7.** The suit was for setting aside an *ex parte* decree and the execution proceedings thereunder, including a Court sale, on the allegation that the defendant fraudulently suppressed and attempted to suppress the processes issued both in the course of the suit and of the execution proceedings, and thus obtaining the *ex parte* decree and its execution behind the back of the plaintiff. The plaintiff had previously moved the Court under Section 103 for setting aside the *ex parte* decree for re-trial, but his motion was rejected by the lower Court.

*Held.*—A party to an *ex parte* decree, who had unsuccessfully applied under Section 103 is competent to maintain a separate suit for setting aside the *ex parte* decree and the execution proceedings thereunder on the ground of fraud.

The general rule seems to be that a judgment cannot be set aside or impeached collaterally upon the mere ground that false evidence such as a forged document, was given at the trial, but that it may be set aside or impeached collaterally for actual fraud, such fraud consisting "in meditated and intentional contrivance to keep the parties and Court in ignorance of the real facts of the case, and obtaining the judgment by such contrivance and also in facts relating to the manner of obtaining jurisdiction of the cause." A party against whom an *ex parte* decree is passed and who by fraud of the decree-holder is kept in ignorance of the execution processes until the expiry of 30 days allowed by law for application for new trial, would be left without any remedy, if he is not to be permitted to prove such fraud in a separate suit, and though it is very desirable that in such suits the allegation of fraud should be closely scrutinised and should be supported by strong proofs, it does not appear equitable to prevent the party from producing strong proofs in support of his plea and getting relief on the ground of fraud.

The question of fraud or no fraud is a question of fact. Fraud is a thing which from its very nature is incapable of direct proof, and proof of fraud depends mostly upon circumstances.

A plea of fraud in avoidance of the Court's proceedings should be carefully scrutinised and should not be allowed to prevail on light ground.

10 T. L. R., 4 is distinguishable, as the plaintiff there did not seek to set aside the *ex parte* and the incidental observations made in that case were mere *obiter dicta.*— **17 T. L. R.**, *143.*

Fol.—K. P., 550.

**8.** An order under Section 103 setting aside an *ex parte* decree is not liable to revision under Section 568 [new Section 89], as the aggrieved party has a remedy provided by law under Section 560 [new Section 88 (1)] of the Code.

An order setting aside an *ex parte* is an interlocutory order. The intention of the Legislature was to give a provisional finality to such interlocutory orders with a view to allow the trial in the original Court to proceed without disturbance at every stage on account of alleged illegality or irregularity, until the trying Court has come to a decision on the whole case. The Legislature provides a remedy for such orders but, for reasons of public policy, it has

thought fit to give the remedy only when the case comes in appeal (F. B.).—
**17 T. L. R. App., *1*.**

Fol.—39 T. L. R., 63
(=12 T. L. J., 371).
2 T. L. J., 280.
Ref.—2 S. D., 247.
4 T. L. J., 112.
41 T. L. R., 257
(=16 T. L. J., 29).
17 T. L. J., 125.

**9.** In a suit for recovery of money due on a joint hypothecation deed, the first Court passed an *ex parte* decree against all the defendants; but on the application of one of the defendants, the *ex parte* order as against him alone was set aside. At the re-trial the Munsiff found that the hypothecation debt was discharged and dismissed the plaintiff's suit as against all the defendants. The District Judge modified the Munsiff's decree by restoring the *ex parte* decree against all the remaining defendants who failed to get the same cancelled.

*Held.*—The decision of the Munsiff was right.— **19 T. L. R., *37*.**

Ref.—43 T. L. R., 99
( = 17 T. L. J., 644).

**10.** The maternal grand-uncle of a minor defendant applied to set aside an *ex parte* decree against the latter on the ground that notice of the suit was not served on the minor and that his mother who had represented him in the suit defaulted to appear in collusion with plaintiff. The Munsiff dismissed the application on the sole ground that the applicant was not a party to the *ex parte* decree and could not therefore apply to set it aside, and this order was upheld in appeal by the District Judge. It appeared that the appointment of the mother as guardian was not made on enquiry by the Court and that the notice to the mother was not personally served and she did not appear to defend the suit nor show that she was careful of the interest of the minor.

*Held.*—Where the appointment of a guardian was not made by the Court under Section 423, Civil Procedure Code, the application under Section 103 to set aside an *ex-parte* decree against the minor need not necessarily be made by the minor himself or the guardian on the record of the suit. The minor in the *ex parte* enquiry must be taken to have been unrepresented and therefore the decree ought to be set aside.

The appointment of a guardian *ad litem* must be made on application by plaintiff to the effect that the person proposed is a proper person and has no interest in the subject-matter of the litigation adverse to the minor. On being satisfied on these points, the Court has to pass a formal order of appointment under Section 423, Civil Procedure Code [=Or. XXXII, r. 3].—
**21 T. L. R., *70*.**

**11.** The question having arisen whether under Section 103 of the Civil Procedure Code the legal representative of a judgment-debtor was entitled to apply to have an *ex parte* decree set aside:

*Held* (by the majority).—The legal representative had, under the Section, no unconditional right to apply to have the decree set aside, but that if he had been brought on the record by the decree-holder or his representative then he acquires the right to make an application under the Section.

*Per T. Sadasiva Iyer, C. J.*—I hold that defendant's heir has an unconditional right to come in under Section 103 and that it is unnecessary that even the original decree-holder should have brought him on the record in execution, that it is *a fortiori* unnecessary that even a recognised assignee should have so brought the defendant's heir on record and that it is still less necessary that an alleged assignee decree-holder should have so brought him. * * I cannot understand why if the defendant's heir 'becomes subject to the obligations under the decree he is 'not entitled to the rights and benefits *qua* procedure of the

original defendant'. I think that in all statutes whenever a right is given to a person, that person's heirs, assignees and legal representatives have *ipso facto* the same right, unless by the very nature of the right (such as a right to an office which involves considerations of personal fitness and rights under a contract which are dependant on personal performance, as a contract with an artist or a sculptor and), unless (to repeat) by the very nature of such right it cannot accrue to the benefit of the legal representatives or assignee. I think that 'defendant' in Section 103 includes defendant's heir, and just as the defendant could at any time and unconditionally (subject, of course, to the law of limitation) apply for setting aside an *ex parte* decree, his heir has the same unconditional right. * * Section 103 gives a valuable and necessary right to a party and I see no reason why a very narrow interpretation should be put upon it.— **23 T. L. R.**, *219.*

**12.** An application for setting aside an *ex parte* decree is governed by Article 186 of the Limitation Regulation (old) which lays down a period of thirty days from the date of executing any *process for* enforcing the judgment or from the date of notice personally served for showing cause why execution should not issue, whichever may happen first. The defendant's knowledge of the decree is immaterial.—

**24 T. L. R.**, *226.*

Ref.—9 T. L. J., 119.

[Under the corresponding Article 149 of the present Limitation Regulation, time runs from "the date of the decree or, where the summons was not personally served, when the applicant has knowledge of the decree."]

**13.** Where a party presented a petition to the Munsiff misquoting the Section being under the impression that the Section quoted by him covered his case :

*Held.*—The fact that the applicant relied on the wrong Section will not deprive the Court of a jurisdiction it is competent to exercise.

Under Clause (9) of Section 557 C. P. C., [= Or. XLII, r. 1], an appeal lies against an order under Section 103. The order in appeal being final, there is no right of second appeal provided therefrom.—

**1 S. D.**, *349.*

**14.** The appeal was against the order of the Munsiff setting aside the decree *ex parte* against the first defendant. The Munsiff's decree was passed on 23-4-1082. Plaintiffs appealed against the decree on 25-7-1082. The first defendant's application for setting aside the *ex parte* decree as against him was made on 27-6-1082. The order to setting aside was passed on 7-8-1082, that is, after the appeal had been filed in the High Court.

*Held.*—When an appeal has been duly filed, the lower Court has pending the decision of the appeal no jurisdiction over the cause, and can, *as a rule*, pass no order thereon.

It is always advisable "to avoid a conflict of jurisdiction and to prevent any action on the part of the inferior Court which would have the effect of controlling the powers of the High Court with reference to the matter actually under appeal." "There could not be a greater absurdity in judicial proceedings than that a cause should be proceeding at the same time in the inferior and appellate tribunals of the country." If the first defendant as a respondent (in the appeal) is in a position to bring before the Appellate Court the matter to be reviewed, he can never be allowed to get an order in his favour from the inferior Court till the appeal is disposed of.

Though the application in the lower Court was entertainable, the order passed during the pendency of the appeal against the decree is set aside.— **2 S. D.**, *264.*

Fol.—35 T. L. R., 30.
8 T. L. J., 286.
Ref.—19 T. L. J., 867.

**15.** In a suit on a pro-note executed by A alone, B and C were also made defendants on the ground that the execution was for a partnership liability. The suit which had been at first decreed *ex parte* was restored to the file on the motion of B alone. Thereupon B denied the partnership liability and the suit was accordingly decreed against A alone.

The High Court while dismissing the appeal by the plaintiff recorded the following findings:—The claim under the pronote being indivisible, the Court on an application by one of the defendants under Section 103, C. P. C has power to re-open the whole suit.

Though C continued to be *ex parte* even in the second trial, he cannot be made liable as he is not a party to the plaint pronote and as there is no reliable evidence against him.— **K. P.,** *556.*

Ref.—43 T. L. R., 99
(=17 T. L. J., 644).

**16.** A decree on a hypothecation bond passed *ex parte* against the defendants was modified at the instance of some of the defendants in regard to the amount of interest due on the bond, the Court in the revised decree using language suggesting that the first decree was left unchanged as against the other defendants. On the decree-holder proceeding to execute the first decree against the defendants who had not joined in the application to set aside the *ex parte* decree :

*Held* (upholding the contention of the defence).—As the interests of the defendants were identical, and as both the decrees were against the plaint properties, the second or amended decree, under Section 516 [Or. XL, r. 4] read with Section 288 [new Section 40] enured to the benefit of all the defendants, and the decree-holder could not execute the first decree.

When the interests of several defendants in a decree are identical any one of them may appeal against the decree on behalf of all.— **I T. L. J.,** *233.*

Ref.—43 T. L. R., 99
(=17 T. L. J., 644).

**17.** Plaintiff obtained a decree for money against defendants on 16-4-1082, and applied for execution of the decree by the issue of warrants of arrest of the defendants on 24-10-1082. The warrants were returned unexecuted and the Court on 17-11-1082 struck off the execution application. In the meanwhile the first defendant who had been originally *ex parte* applied on 28-10-1082 under Section 103, C. P. C., to set aside the decree. On 31-11-1082, plaintiff put in a petition opposing the above application. The first defendant's application was rejected on 29-12-1083. The plaintiff on 8-5-1086 sought to execute his decree. The District Judge rejected the application as time-barred.

*Held* (by the majority).—The period of pendency of first defendant's application for setting aside the *ex parte* decree should be deducted in calculating the time allowed by the law of limitation for execution of decrees.

*Per Viraraghava Iyengar, J.*—The object of the first defendant's application under Section 103 is to have the decree which was then subsisting against him set aside, thus relegating the parties to the position they occupied when the suit was first instituted. If the application of the first defendant had been a valid one, it might have been granted unconditionally or on terms. The Court may set aside a decree upon such terms as it thinks fit. The Court has a full discretion in the matter. If the defendant is not at all in fault and has a sufficient defence, there does not appear to be any reason why he should be put on terms. In other cases terms may be imposed. The Court may direct payment of all previous costs in the action as a condition precedent to setting aside a decree. It may order a

party to give security for those likely thereafter to be incurred; it may direct him to pay the decretal amount into Court, &c. Whether the application is granted unconditionally or on terms, it has been decided that, if execution proceedings had already been taken under the first decree and such proceedings had culminated in a sale of immovable properties belonging to the defendant—judgment-debtor and purchased by the decree-holder himself, that such purchase could not stand, and that, even in cases where in the course of such execution proceedings, the auction purchasers were strangers to the suit, the purchase moneys paid into Court by such strangers, auction-purchasers, should be restored to the judgment-debtor.

*Per Krishnan Nair, C. J.*—Reason and convenience point to the desirability of the Court not allowing the execution of an *ex parte* decree during the pendency of an application to set it aside.—

**28 T. L. R.,** *151*
(=**3 T. L. J.,** *128*).

Overruled.—18 T. L. J., 1114.

**18.** An application for re-delivery of the property delivered in execution of an *ex parte* decree which was subsequently set aside may be made within three years of the setting aside of the *ex parte* decree.—

**29 T. L. R.,** *201*
(=**4 T. L. J.,** *35*).

**19.** A Land Acquisition Officer passed an *ex parte* decree in a case under the Land Acquisition Regulation; but the claimant having applied the same day to set aside the *ex parte* decree, he set aside the decree and admitted a statement of defence from the claimant. After evidence was taken, the then presiding Officer who had succeeded the Officer who set aside the *ex parte* decree considered the claimant's application for setting aside the *ex parte* decree, as an application for review and holding that an application for review could not be entertained under the Regulation, rejected that application of the claimant.

*Held.*—The latter order was made without jurisdiction. There was no provision of law under which the order passed under Section 103 C. P. C., could be revised by the successor in office.

As the decision of the first Officer was set aside by that Officer himself, and was no longer in existence, it was clearly improper to have filed an appeal against it. The correct course under the circumstances was to have gone to the High Court by way of revision.— **4 T. L. J.,** *112*.

**20.** In a suit for redemption on payment of the mortgage amount and the value of improvements, the first defendant filed a written statement setting forth several contention buts, did not adduce any evidence. On the final day of hearing, neither the defendant nor his Vakil appeared and the suit was decreed in terms of the plaint. Subsequently, the first defendant applied to set aside the *ex parte* decree and the Court granted his prayer.

*Held.*—As neither the first defendant nor his Vakil appeared on the last day to which the case stood posted, the Munsiff was right in treating his judgment as one passed under Section 152 [=Or. XVII r. 2] and in holding that he was competent to entertain an application under Section 103 to have the *ex parte* decree set aside.—

**32 T. L. R.,** *128*.

Ref.—38 T. L. R., 122
(=13 T. L. J., 204).

**21.** Plaintiff obtained an *ex parte* decree against defendants 1 to 3 on 30-1-1082. He then applied for execution, but his application was struck off for default of prosecution on 27-2-1084. On the application of defendants 1 and 3, the *ex parte* decree was set aside. After due trial a revised decree was passed on 31-1-1085 dismissing the suit as against defendants 1 and 3, but the decree expressly declared it was operative against the second defendant. Plaintiff's appeal against the decree was dismissed on

27-4-1086. The plaintiff applied on 11-3-1089 for execution of the decree against the second defendant. On behalf of the second defendant it was contended that as there was an executable decree against him at least from the date of the revised decree, *i. e.*, from 31-1-1085, and as it was not jeopardised by the appeal, limitation ought to be calculated from the date of the revised decree and not the date of the decree in appeal, and if so reckoned the application of 11-3-1089 was barred.

*Held* (Overruling the contention).—According to the strict grammatical construction of Clause (2) of Article 153 of the Limitation Regulation [=Art. 166 of Regn. VI of 1100], the decree-holder had three years from the date of the appellate decree, even though there was an executable decree against the 2nd defendant from at least the date of the revised decree and though that decree was not imperilled by plaintiff's appeal; and this strict interpretation was the correct one.— **6 T. L. J., *66*.**

Fol.—8 T. L. J., 425.
42 T. L. R., 215.

**22.** As soon as an *ex parte* decree is set aside, the Court sale held in execution of that decree falls through and any fresh decree, even if subsequently made in favour of the plaintiff, cannot validate such sale.— **34 T. L. R., *163*.**

**23.** Plaintiff sued defendants 1 to 4 for the redemption of a mortgage granted by the plaintiff's Karanavan. At first, none of the defendants appeared to contest the suit and consequently an *ex parte* decree was passed in plaintiff's favour on 30-5-1085. Subsequently the first defendant got the *ex parte* decree set aside under Section 108 of the Civil Procedure Code. The District Munsiff after trial dismissed the plaintiff's suit on 31-10-1087. The plaintiff then took the matter in appeal with the result that on 6-8-1088 the Appellate Court reversed the Munsiff's decision and gave the plaintiff a decree for redemption. About a year after that, *viz.*, on 6-7-1089, the fourth defendant applied to the District Munsiff to have the *ex parte* decree against her set aside on the ground that she had no knowledge of the litigation and that the summonses to her were not properly served. The District Munsiff set aside the *ex parte* decree and the suit was once more restored to the file by an order dated 29-10-1089. Upon the fourth defendant's contention, evidence was again recorded and eventually on 17-11-1091, the District Munsiff gave the plaintiff a decree in his favour. This decision was subsequently reversed by the District Judge. The plaintiff in special appeal contended that the District Munsiff was acting *ultra vires* in setting aside the *ex parte* decree passed by the Appellate Court against the fourth defendant, that the District Munsiff had no jurisdiction to pass such an order and that consequently all proceedings had, as the result of the aforesaid illegal order, are null and void and should be declared to be such, so as to restore the parties to the position in which they were before the case was restored to the file at the fourth defendant's instance.

*Held*.—(1) The fact that a plaintiff does not withdraw from the case, when, in pursuance to an illegal order (setting aside an *ex parte* decree) passed without jurisdiction the Court proceeds to try the case, does not amount to acquiescence or waiver on the part of the plaintiff.

(2) Even assuming that there was any sort of acquiescence on the part of the plaintiff, that circumstance by itself will not be sufficient to give jurisdiction, if under the law the Court had no jurisdiction in the matter.

(3) Reading Sections 547 [new Section 78] and 560 [new Section 83 (1)] together, it seems to be clear that the plaintiff is entitled to challenge in an appeal presented by him on a decree against him, the validity of the order of the lower Court setting aside the *ex parte* decree.

(4) All the proceedings had, as the result of an illegal order, setting aside an *ex*-

*parte* decree, passed without jurisdiction, are null and void.

(5) The Munsiff was not competent to restore the suit to his file after the case was decided by the Appellate Court.— **8 T. L. J.,** *286.*

Fol.—35 T. L. R., 30.
Ref.—19 T. L. J., 867.

**24.** A party who has during the progress of a suit unsuccessfully applied under Section 96 [= Or. IX, r. 7] to have the order declaring him *ex parte* set aside and to be heard in answer to the suit is not debarred *ipso facto* from applying under Section 103, to have the decree passed *ex parte* against him set aside.— **9 T. L. J.,** *95.*

**25.** A decree was originally passed *ex-parte* against one of the defendants. This decree was superseded by the appellate decree of the High Court. The defendant who had not entered appearance, applied to the original Court under Section 103, to set aside the *ex parte* decree passed against him.

*Held.*—The original Court had no jurisdiction to entertain the application.— **35 T. L. R.,** *30.*

Ref.—19 T. L. J., 867.

**26.** When the defendant makes an application under Section 103 to set aside an *ex parte* decree relying on his inability to appear when the suit was called on for hearing, he should account for his non-appearance not only on the date of the first hearing but on any subsequent date when the suit was called on for hearing.

The appellant is entitled to have the decree set aside if he can show that he was prevented by sufficient cause from appearing when the suit was called on for hearing. This means on the date of first hearing and also on the date when the suit was called on for hearing subsequently, in the light of Section 96 [= Or. IX, r. 7] which lays down that, if the Court has adjourned the hearing of the suit *ex parte*, the defendant may at or before such hearing, appear and show good cause for his previous non-appearance in which case he will be allowed to defend the suit. The words "for his previous non-appearance" must refer to the previous non-appearance of the defendant not only on the date of first hearing but on any subsequent date to which the case had been adjourned.— **10 T. L. J.,** *269.*

**27.** The words "the Court by which the decree was made" in Section 103 are to be taken according to their grammatical construction. Therefore, so long as that Court exists, it is to that Court that an application under the Section has to be made.— **10 T. L. J.,** *336.*

**28.** The defendant, judgment-debtor, in a case applied to the Court under Section 103 to set aside the decree. His petition was rejected and his appeal from the order was also disposed of against him, on the ground that the allegations, on which the petition was based, were false. Then he appealed from the decree after the time limited by law and, contending that the proceedings under Section 103 and the appeal therefrom constituted 'sufficient cause' under Section 5 of the Limitation Regulation, prayed for the delay being excused.

*Held.*—The words "sufficient cause" in Section 5 are no doubt very wide, but they must be construed just like other words giving discretionary power to Courts in a reasonable and proper manner. The defendant based his petition on false allegations and was defeated.

In the circumstances, the proceedings under Section 103, C. P. C., could not constitute 'sufficient cause' under Section 5 of the Limitation Regulation. The delay could not be excused (F. B.).— **38 T. L. R.,** *47*
(= **11 T. L. J.,** *509*).

**29.** The High Court cannot, under Section 568, C. P. C., [new Section 89] entertain a revision petition against an order

setting aside an *ex parte* decree under Section 103, as the aggrieved party has a remedy provided by law under Section 560 [new Section 83 (1) ] of the Code (F. B.).— **39 T. L. R.,** *63* (=**12 T. L. J.,** *371*).

Ref.—41 T. L. R., 257 (= 16 T. L. J., 29).
17 T. L. J., 125.
19 T. L. J., 383.

**30.** (1) Under Section 103 C. P. C., what is or is not sufficient cause would depend on the circumstances of each case and cannot be laid down *a priori*; but the use of the word 'prevented' points to something that actively caused the appellant's non-appearance—such as unavoidable casualty or misfortune, mistake, want of notice, fraud or the like. A mere miscalculation by a defendant as to the probable course of litigation could hardly be described as something that 'prevented' him from appearing at the hearing in the above sense, without a straining of the language. Such cases may no doubt be deserving of relief and are actually relieved against by the Courts in England and America which are invested with large discretionary powers in this respect; but the powers of the Courts here to give relief by summary process in such cases is limited by Section 103 and they have no power to give relief in a case not covered by the words of the Section.

(2) In an appeal from an *ex parte* decree, it is open to the appellant to take the plea that the evidence on record is not sufficient to sustain the decree.

(3) On an appeal from an *ex parte* decree, there is nothing to preclude the Court from considering whether the *ex-parte* should not be set aside for the reason that the appellant has been prejudiced by the procedure adopted by the lower Court. And if it comes to that conclusion, the High Court is competent to set aside the decree and order a re-trial.

In so doing the Appellate Court is not confined to the grounds mentioned in Section 103.— **14 T. L. J.,** *220*.

**31.** On an appeal from the order refusing to vacate an *ex parte* decree, the High Court has inherent jurisdiction to stay execution of the decree and that jurisdiction is not ousted by the provisions in the Code dealing with the subject of stay of execution.— **16 T. L. J.,** *24*.

**32.** On an application to set aside an *ex parte* decree, the lower Court passed an order that the defendant should furnish security for Rs. 7,500, a moiety of the decree amount, within a specified time, and that, in the event of his not doing so, the application would stand dismissed. Without complying with the order to furnish security, the defendant preferred the appeal.

*Held.*—(1) The order requiring security to be furnished for a portion of the decree amount was *ultra vires*. The power of the Court to put the applicant on terms under Section 103, was limited to costs of the suit.

The claim to impose any other terms does not seem to be warranted by the words of the Section. The expression "payment into Court or otherwise" occurring after "upon such terms as to costs," should be taken to refer to mode of payment of costs and not to the decree amount or any other money in the absence of any reference to the latter. If the Legislature intended to empower Courts to demand in proper cases safeguards for provisional satisfaction of the *ex parte* decree other than relating to costs when passing order under Section 103, some reference might be expected not only to decretal amount but also to other decretal awards so as to embrace all classes of *ex parte* decrees. But the provision mentions only costs for imposing terms.

(2) The order in question was appealable. An order under Section 103 imposing terms on the applicant and providing for dismissal of the application if the terms are not satisfied was appealable under Section 557,

Clause 9, of Regulation II of 1065 or under Order XLII, Rule 1, Clause (c) of Regulation VIII of 1100, as the case might be (F. B.).— **42 T. L. R.,** *468* (= **16 T. L. J.,** *449*).

Overruled.—19 T. L. J., 248.

**33.** In construing the expression "the decree" in Section 108, Courts are agreed that when the decree is indivisible, the whole must be taken to have been set aside. The test in such cases is taken to be whether the claim of the plaintiff did not rest on a basis common to all the defendants.

The benefit of the recent amendment of the Limitation Regulation could not be made available to a suitor if, on the date of the action, his rights to enforce the remedy have been lost by lapse of time. The rule that the presumption against retrospective construction has no application to enactments which affect only the procedure and practice of the Courts even where the alteration which the statute makes has been disadvantageous to one of the parties could not have any application to the case. The subsisting nature of the legal right for enforcement of the remedy has to be determined with reference to the date of the filing of the plaint and not the date of the decree.— **43 T. L. R.,** *99* (= **17 T. L. J.,** *644*).

**34.** Except in cases where the decrees are indivisible so far as the various defendants are concerned, the cancellation of the *ex parte* decree against any one of them would be operative against him alone. The position will all the more hold good in cases where the decree originally passed is arrived at upon an adjudication on the merits so far as such other defendants are concerned. **18 T. L. J.,** *449*.

**35.** The conditions which, under Order IX, Rule 13, a Court may impose on an applicant who seeks to have an *ex parte* decree set aside may be conditions as to the payment of costs or conditions as to the payment into the Court of the whole or part of the decretal amount or such other conditions as the Court may think fit to impose. Such conditions, therefore, are not restricted to questions relating to costs.

The words "payment into Court" in the Rule indicate that the terms may be imposed not only regarding costs but also in respect of payment of the decretal amount or any portion thereof (F. B.).— **19 T. L. J.,** *248*.

**36.** If the decree of the primary Court has become merged with that in appeal, the former will not have jurisdiction to entertain an application under Order IX, Rule 13. Even in such cases, the absence of the particular defendant in question on record in appeal would enable the primary Court to validly entertain such an application unless the decree passed in appeal is an indivisible one. But in all these cases, the filing of the appeal *per se* would not divest the primary Court of jurisdiction to entertain applications of this kind. The method of disposal is an essential factor for consideration in the matter. To deprive the original Court of jurisdiction to entertain applications of this kind, the disposal of the case in appeal must be on its merits.

Where a decree is passed against a minor represented by a guardian who has not consented to act as such, the decree cannot be treated as a nullity. The minor has to be considered to be a party to the suit and it is open to him to apply to set aside the decree under Order IX, Rule 13.— **19 T. L. R.,** *867*.

**37.** Order IX, Rule 13, does not warrant the setting aside of a decree in favour of one defendant and against plaintiff at the instance of another non-appearing defendant. What the Proviso to the Rule assumes and what is required for it to operate is the existence of a decree against more than one defendant.

So long as a plaintiff has not exerted himself to modify a decree by a review or through an appeal, he cannot get rid of the

No decree to be set aside without notice to opposite party.

14. No decree shall be set aside on any such application as aforesaid unless notice thereof has been served on the opposite party.

## ORDER X.

### Examination of Parties by the Court.

Ascertainment whether allegations in pleadings are admitted or denied.

1. At the first hearing of the suit, the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

Oral examination of party or companion of party.

2. At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the Court; and the Court may, if it thinks fit, put in the course of such examination questions suggested by either party.

---

effect of it by agitation on the part of a non-appearing defendant.—
**19 T. L. J.**, *1102*.

**38.** See also—
Sec. 78.—
**31 T. L. R.**, *233*
(=**5 T. L. J.**, *461*).
**19 T. L. J.**, *388*.
" 79.—**2 T. L. R.**, *29*.
Or. V, r. 17.—**34 T. L. R.**, *174*.
**37 T. L. R.**, *290*
(=**12 T. L. J.**, *262*).
" IX, r. 6.—**3 T. L. R.**, *22*.
**12 T. L. J.**, *151*.
**15 T. L. J.**, *368*.
" IX, r. 7.—**2 S. D.**, *247*.
" XVII, r. 2.—**45 T. L. R.**, *291*.
" XXI, r. 65.—**9 T. L. J.**, *119*.
" XL, r. 21.—**14 T. L. R.**, *29*.
" XLV, r. 7.—**13 T. L. R.**, *167*.

**Or. IX, r. 14** [= S. 104 = *Or. IX, r. 14*]

**Or. X, r. 1** [= S. 112 = *Or. X, r. 1*]

Section 112 of the old Regulation was as follows:—"112. At the first hearing of the suit, the Court shall ascertain from the defendant or his pleader whether he admits or denies the allegations of fact made in the plaint, and shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials."

**Or. X, r. 2** [= S. 113 = *Or. X, r. 2*]

Substance of examination to be written.

3. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

Consequence of refusal or inability of pleader to answer.

4. (1) Where the pleader of any party who appears by a pleader or any such person accompanying a pleader as is referred to in Rule 2, refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

---

## ORDER XI.

### Discovery and Inspection.

Discovery by interrogatories.

1. In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

---

**Or. X, r. 3** [= S. 114 = *Or. X, r. 3*]

**Or. X, r. 4** [= S. 115 = *Or. X, r. 4*]

1. The words "or any such person accompanying a pleader as is referred to in Rule 3" are new.

2. In Sub-Rule (2), the words "pronounce judgment" have been substituted for "pass a decree."

**Or. XI**: I. 1. See Objects and Reasons, Page 14, *Supra*.

Particular interrogatories to be submitted.

2. On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court. In deciding upon such application, the Court shall take into account any offer which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the suit or for saving costs.

---

2. In regard to Interrogatories, the Indian Special Committee observed as follows :—"The provisions in the Code as to discovery are based on the rules of English procedure in force at the time when it was passed. Since then the English procedure has been amended and is now contained in Order 31. This Order has in effect been adopted in the rules regulating the procedure on the original side of the High Courts of Calcutta and Bombay and has, it is believed, been found to work satisfactorily in practice.

"On the other hand, in Mofussil Courts little use has yet been made of the machinery of discovery, and the Committee therefore think the rules of the Calcutta and Bombay High Courts on their original sides may be safely adopted without risk of disturbing a procedure with which the Mofussil Courts have become familiarised.

"This will secure uniformity of practice and also the advantage of the commentary on the rules prescribed by the English decisions."

II. Rules 1 to 11 deal with the first branch of discovery, that is, by way of answers to interrogatories. Rules 12 to 19 deal with the second branch of discovery as affecting documents.

---

**Or. XI, r. 1** [ = S. 116 = *Or. XI, r. 1* = En. Or. 31, r. 1]

I. The corresponding Section of Regulation II of 1065 ran as follows :—

"116. *Power to deliver interrogatories.*—Any party may at any time by leave of the Court deliver through the Court interrogatories in writing for the examination of the opposite party, or where there are more opposite parties than one, any one or more of such parties, with a note at the foot thereof stating which of such interrogatories each of such persons is required to answer:

Provided that no party shall deliver more than one set of interrogatories to the same person without the permission of the Court, and that no defendant shall deliver interrogatories for the examination of the plaintiff unless such defendant has previously tendered a written statement and such statement has been received and placed on the record."

II. Rule 1 of Order XXXI of the Rules of the Supreme Court, 1883, as amended, is as follows:—

"1. In any cause or matter the plaintiff or defendant by leave of the Court or a Judge may deliver......required to answer : Provided that interrogatories which do not relate to any matters in question in the cause or matter shall be deemed......cross-examination of a witness."

Section 100 of the Judicature Act, 1873, defines 'Cause' as including any action, suit, or other original proceeding between a plaintiff and a defendant, and 'Matter' as including every proceeding in the Court not in a cause.

The English Rule does not contain the first Proviso.

III. For Form of Order for delivery of interrogatories, see Appendix C, Form No. 1.

3. In adjusting the costs of the suit, inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the Court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

Costs of interrogatories.

4. Interrogatories shall be in Form No. 2 in Appendix C with such variations as circumstances may require.

Form of interrogatories.

5. Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

Corporations.

---

**Or. XI, r. 2** [ = ,, = *Or. XI, r. 2* = En. Or. 31, r. 2]

Rule 2 of Order XXXI of the Rules of the Supreme Court, 1883, as amended, is as follows:—

"2. A copy of the interrogatories proposed to be delivered shall be delivered with the summons or notice of application for leave to deliver them at least two clear days before the hearing thereof (unless in any case the Court or Judge shall think fit to dispense with the requirement) and the particular interrogatories sought to be delivered shall be submitted to and considered by the Court or Judge. In deciding......... documents relating to any matter in question, and leave.......for disposing fairly of the case or matter or for saving costs."

**Or. XI, r. 3** [ = S. 118 = *Or. XI, r. 3* = En. Or. 31, r. 3]

The corresponding Section of Regulation II of 1065 was as follows:—

"118. *Inquiry into propriety of exhibiting interrogatories.*—The Court in adjusting the costs of the suit shall, at the instance of any party, inquire or cause inquiry to be made into the propriety of delivering such interrogatories; and if it thinks that such interrogatories have been delivered unreasonably, vexatiously or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault."

**Or. XI, r. 4** [ = ,, = *Or. XI, r. 4* = En. Or. 31, r. 4]

For Form for Interrogatories, see Appendix C, Form No. 2.

**Or. XI, r. 5** [ = S. 119 = *Or. XI, r. 5* = En. Or. 31, r. 5]

1. Section 119 of Regulation II of 1065 was as follows —

"119. If any party to a suit be a body corporate or a Joint Stock Company, whether incorporated or not, or any other body of persons empowered by law to sue or be sued, whether in its own name or in the

6. Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited *bona fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

Objections to interrogatories by answer.

7. Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories.

Setting aside and striking out interrogatories.

8. Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the Court may allow.

Affidavit in answer, filing.

---

name of any officer or other person, any opposite party may apply to the Court for an order allowing him to deliver interrogatories to any member or officer of such Corporation, Company or body, and an order may be made accordingly."

II. Rule 5 of Order XXXI of the Rules of the Supreme Court, 1883, is as follows:—"If any party to a cause or matter be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons, empowered by law.........or officer of such corporation, company or body, and an order may be made accordingly."

**Or. XI, r. 6** [= S. 120 = *Or. XI, r. 6* = En. Or. 31, r. 6]

The corresponding Section of Regulation II of 1065 was as follows:—

"120. *Power to refuse to answer interrogatories as irrelevant, &c.*--Any party called upon to answer interrogatories whether by himself, or by any such member or officer, may refuse to answer any interrogatory on the ground that it is irrelevant, or is not put *bona fide* for the purpose of the suit, or that the matter inquired after is not sufficiently material at that stage of the suit or on any other like ground."

**Or. XI, r. 7** [= „ = *Or. XI, r. 7* = En. Or. 31, r. 7]

Rule 7 of Order XXXI of the Rules of the Supreme Court, 1883.—"This Rule was framed at a time when interrogatories could be delivered in some cases without leave and when, even if leave were given, it was given generally, and the particular interrogatories were not considered at the hearing of the application for leave. By the R. S. C., November 1893 (r. 1), leave was made necessary in all cases, and the particular interrogatories must be considered at the hearing of the application for leave, and this Rule ought then to have been struck out as being unnecessary. It has been annulled by the R. S. C. (Revision), 1917."— *Yearly Practice for 1925.*

**Or. XI, r. 8** [= S. 121 = *Or. XI, r. 8* = En. Or. 31, r. 8]

Section 121 of the old Regulation was:—

"121. Interrogatories shall be answered by affidavit to be filed in Court within ten days from the service thereof or within such further time as the Judge may allow."

Form of affidavit in answer.

9. An affidavit in answer to interrogatories shall be in Form No. 3 in Appendix C, with such variations as circumstances may require.

No exception to be taken.

10. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court.

Order to answer or answer further.

11. Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court for an order requiring him to answer or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by *viva voce* examination, as the Court may direct.

Application for discovery of documents.

12. Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power relating to any matter in question therein. On the hearing of such appplication, the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit: Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

---

**Or. XI, r. 9** [= ,, = *Or. XI, r. 9* = En. Or. 31, r. 9]

For Form for Answer to Interrogatories, see Appendix C, Form No. 3.

**Or. XI, r. 10** [= ,, = *Or. XI, r. 10* = En. Or. 31, r. 10]

The English Rule has been annulled by R. S. C. (Revision), 1917.

**Or. XI, r. 11** [= S. 122 = *Or. XI, r. 11* = En. Or. 31, r. 11]

The corresponding Section of the old Regulation was as follows :—

"122. *Procedure where party omits to answer sufficiently.*—If any person interrogated omits or refuses to answer or answers insufficiently any material interrogatory or interrogatories, the Court may, on the application of the other party, require him to appear before it and examine such person *viva voce* with reference to such interrogatory or interrogatories."

**Or. XI, r. 12** [=S. 124, Para 1 = *Or. XI, r. 12* = En. Or. 31, r. 12]

13. The affidavit to be made by a party against whom such order as is mentioned in the last preceding Rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No. 5 in Appendix C, with such variations as circumstances may require.

Affidavit of documents

14. It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

Production of documents.

---

**Or. XI, r. 13** [=S. 124, Para 2
= *Or. XI, r. 13*
= En. Or. 31, r. 18]

I. Section 124 of Regulation II of 1065 ran as follows: —

"124. *Power to order discovery of document.*—The Court may, at any time during the pendency therein of any suit, order any party to the suit to declare by affidavit all the documents which are or have been in his possession or power relating to any matter in question in the suit, and any party to the suit may, at any time, before the first hearing, apply to the Court for a like order.

*Affidavit in answer to such order.*—Every affidavit made under this Section shall specify which, if any, of the documents therein mentioned the declarant objects to produce, together with the grounds of such objection."

II. For Form of Order for affidavit as to documents and for Form of affidavit as to documents, see Appendix C, Forms Nos. 4 and 5.

**Case Law.**

Suit on an account. The defendant denied the account and, in order to test the accuracy of plaintiff's account, he applied for issue of a commission for seizure of all records and vouchers in plaintiff's custody and touching the transactions in question. The lower Court allowed his application on the ground that plaintiff was no loser thereby.

*Held.*—In passing the order, the District Judge has wholly ignored the provisions contained in Chapter X of the Civil Procedure Code (Sections 116-140). Granting that the provisions contained in that Chapter are not exhaustive, it does not follow that the lower Court was justified in ordering the wholesale seizure and taking out by a commissioner of all the accounts and records from 1079 onwards as prayed for by the defence. Section 124 and the following Sections in Chapter X lay down the procedure that has to be adopted in such cases and invest the Court with ample powers to punish the plaintiff or the defendant, as the case may be, who has disobeyed any order for discovery and inspection passed by the Court.— **27 T. L R., *117***
**(= 2 T. L. J., *360*).**

---

**Or. XI, r. 14** [= S. 125 =*Or. XI, r. 14*
=En. Or. 31, r. *14*]

I. Section 125 of Regulation II of 1065 was as follows:—

15. Every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his pleader; and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.

Inspection of documents referred to in pleadings or affidavits.

16. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No. 7 in Appendix C, with such variations as circumstances may require.

Notice to produce.

---

"125. The Court may, at any time during the pendency therein of any suit, order the production by any party thereto of such of the documents in his possession or power relating to any matter in question in such suit or proceeding as the Court thinks right; and the Court may deal with such documents when produced in such manner as appears just."

II. For Form of Order to produce documents for inspection, see Appendix C, Form No. 6.

**Or. XI, r. 15** [= S. 126 = *Or. XI, r. 15* = En. Or. 31, r. 15]

Section 126 of Regulation II of 1065 ran as follows :—

"126. *Notice to produce for inspection documents referred to in plaint, &c.*—Any party to a suit may, at any time before or at the hearing thereof, give notice through the Court to any other party to produce any specified document for the inspection of the party giving such notice or of his pleader, and to permit such party or pleader to take copies thereof.

*Consequence of non-compliance with such notice.*—No party failing to comply with such notice shall afterwards be at liberty to put any such document in evidence on his behalf in such suit, unless he satisfies the Court that such document relates only to his own title, or that he had some other and sufficient cause for not complying with such notice."

**Or. XI, r. 16** [= ,, = *Or. XI, r. 16* = En. Or. 31, r. 16]

For Form of Notice to produce documents, see Appendix C, Form No. 7.

17. The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in Form No. 8 in Appendix C, with such variations as circumstances may require.

Time for inspection when notice given.

18. (1) Where the party served with notice under Rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere, than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit: Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Order for inspection.

---

**Or. XI, r. 17** [=S. 127=*Or. XI, r. 17* = En. Or. 31, r. 17]

I. The corresponding Section of Regulation II of 1065 was as follows :—

"127. *Party receiving such notice to deliver notice when and where inspection may be had.*—The party to whom such notice is given shall, within ten days from the receipt thereof, deliver through the Court to the party giving the same a notice stating a time within three days from such delivery, at which the documents, or such of them as he does not object to produce, may be inspected at his pleader's office or some other convenient place, and stating which, if any, of the documents he objects to produce, and on what grounds."

II. Rule 17 of Order XXXI of the Rules of the Supreme Court, 1883, is as follows :—"17. The party to whom such notice is given shall, within two days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in Rule 13, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party...........as circumstances may require."

III. For Form of Notice to inspect documents, see Appendix C, Form No. 8.

---

**Or. XI, r. 18 (1)** [ = S. 128 = *Or. XI, r. 18 (1)* = En. Or. 31, r. 18 ]

„ **r. 18 (2)** [ = S. 129 = *Or. XI, r. 18 (2)* = En. Or. 31, r. 18 ]

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Verified copies.

19. (1) Where inspection of any business books is applied for, the Court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations: Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.

(2) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

---

The two Sections of the old Regulation corresponding to Sub-Rules (1) and (2), respectively, of this Rule, were as follow :—

"128. *Application for order of inspection.*—If any party served with notice under Section 126 omits to give notice under Section 127 of the time for inspection, or objects to give inspection, or names an inconvenient place for inspection, the party desiring it may apply to the Court for an order of inspection."

"129. *Application to be founded on affidavit.*—Except in the case of documents referred to in the plaint, written statement or affidavit of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing (*a*) of what documents inspection is sought, (*b*) that the party applying is entitled to inspect them, and (*c*) that they are in the possession or power of the party against whom the application is made."

Or. XI, r. 19 [ = ,, = *Or. XI, r. 19* = En. Or. 31, r. 19-A]

The original Sub-Rule (3) of Rule 19-A of Order XXXI of the Rules of the Supreme Court 1883, has been annulled and the following Sub-rule substituted (R. S. C., March 1919) :—

"(3) The Court or a Judge may, on the application of any party to a cause or matter

(3) The Court may, on the application of any party to a suit at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power; and, if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them.

---

at any time, and whether an affidavit of document shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any particular document or documents, or any class or classes of documents, specified or indicated in the application is or are, or has or have at any time been in his possession, custody, or power; and, if not then in his possession, custody, or power, when he parted with the same, and what has become thereof. Such application shall be made on an affidavit, stating that, in the belief of the deponent, the party against whom the application is made has, or has at some time had, in his possession, custody, or power the particular document or documents, or the class or classes of documents, specified or indicated in the application, and that they relate to the matters in question in the cause or matter, or to some or one of them."

"This Sub-Rule enables a party, notwithstanding that the opponent has made an affidavit of documents, sufficient in point of form, to make an application supported by an affidavit (which may be contentious), for an order that his opponent shall state whether he has or has had in his possession or power any particular document or documents or any class or classes of documents. Thus, in practice, a party can, by the use of this Sub-Rule, in some cases attack his opponent's affidavit of documents, and obtain an order for a further affidavit as to particular documents.

"The new Rule considerably enlarges the power to order discovery. The original Sub-Rule was confined to the case where the applicant was able to specify some one or more specified documents. No order could be made unless the applicant could name and specify certain specific documents, and the order must be confined to those particular documents. The particular document or documents had to be named and specified, so that it or they could be identified. Moreover, it was held that the affidavit in support must show that in the belief of the deponent such documents actually are or have been in the party's possession, and have a bearing on the point in dispute. A mere general affidavit based upon *a priori* reasoning asserting that the applicant has reason to believe that a correspondence must have passed, and that book and document exist, would not suffice. The new Sub-Rule substitutes for the words 'one or more specific documents to be specified in the application' the words 'any particular document or documents or any class or classes of documents', and so gets rid of the limitation imposed by the original Sub-Rule."— *Yearly Practice for 1926.*

22. Any party may, at the trial of a suit, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer: Provided always that in such case the Court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, it may direct them to be put in.

Using answers to interrogatories at trial.

23. This Order shall apply to minor plaintiffs and defendants, and to the next friends and guardians for the suit of persons under disability.

Order to apply to minors.

## ORDER XII.

### Admissions.

1. Any party to a suit may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

Notice of admission of case.

---

**Or. XI, r. 22** [ = „ = *Or. XI, r. 22* = En. Or. 31, r. 24]

**Or. XI, r. 23** [ = „ = *Or. XI, r. 23* = En. Or. 31, r. 29 ]

**Order XII.** I. "This order is entirely new. It enables parties to require, as a matter of right, the opposite party to admit or deny their case, whether it be as regards facts or as regards documents. The system now in vogue is to record admissions and denials at the time of settling issues. While the system yields good results when it is followed, it is not always adopted, nor is full use made of it. One disadvantage of the system is that parties are not given previous notice of what exactly they are required to admit or deny, with the result, that admissions are rarely made. Again, it is left to the option of the Court to record such admissions or denials, and the parties have neither the right, nor are they under any obligation to question their opposite side by notice. The proposed provisions should go a great way to render questions at issue specific and direct. Further, by Rule 6, Courts are authorised to pass judgments so far as they are justified by the admissions made by the parties, leaving questions in controversy only to be decided in due course. This provision cannot but be wholesome. It is not infrequently that litigants are able to keep their opponents out of what is theirs by raising trivial questions, and delaying the eventual decision unfairly long."— *Notes on Clauses.*

II. The Indian Special Committee observed:—"The Committee think the practice of admissions may with advantage be extended to facts as well as to documents.

Notice to admit documents.

**2.** Either party may call upon the other party to admit any documents, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the Court, a saving of expense.

---

The procedure is not compulsory, but its adoption would result in cheapening and expediting litigation, and it is hoped that its use will be encouraged by the Courts."

III. This Order deals with admissions made by the parties voluntarily (Rule 1), or pursuant to a notice to admit documents (Rules 2 and 3) or facts (Rules 4 and 5) given by the opposite party, with judgments on admissions (Rule 6), with notice to produce documents (Rule 8), the proof of documents (Rule 7) and with the costs of unnecessarily setting out documents in notices to admit or produce (Rule 9).

**Or. XII, r. 1** [= „ = *Or. XII, r. 1* = En. Or. 32, r. 1]

I. A party may in his pleading state expressly that he admits all or certain of the allegations of fact made in the pleading of his opponent. He may also admit any allegation or allegations in a statement of claim or counterclaim by not denying or not stating that he does not admit the same. (See Order VIII, Rule 5). He may also give express notice in writing that he admits all or certain of the facts alleged by his opponent.

II. As to different kinds of admissions, see Order VII, Rule 5; Order VIII, Rules 3, 4 and 5, and Order XI, Rule 22.

**Or. XII, r. 2** [= S. 123 = *Or. XII, r. 2* = En. Or. 32, r. 2]

I. The corresponding Section of Regulation II of 1065 was as follows:—

"123. *Power to demand admission of genuineness of document.*—Either party may, by a notice through the Court, within a reasonable time not less than ten days before the hearing, require the other party to admit (saving all just exceptions to the admissibility of such document in evidence) the genuineness of any document material to the suit.

The admission shall also be made in writing signed by the other party or his pleader and filed in Court.

If such notice be not given, no costs of proving such document shall be allowed, unless the Judge otherwise orders.

If such notice is not complied with within four days after its being served and the Judge thinks it reasonable that the admission should have been made, the party refusing shall bear the expenses of proving such document, whatever may be the result of the suit."

II. The English Rule has the words "unless at the trial or hearing the Court or a Judge shall certify that the refusal to admit was reasonable" for the words "unless the Court otherwise directs."

III. The object of this Rule is to save the expense of producing at the trial evidence as to the documents which are admitted.

3. A notice to admit documents shall be in Form No. 9 in Appendix C, with such variations as circumstances may require.

Form of notice.

4. Any party may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs: Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purpose of the particular suit, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice: Provided also that the Court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

Notice to admit facts.

5. A notice to admit facts shall be in Form No. 10 in Appendix C and admissions of facts shall be in Form No. 11 in Appendix C, with such variations as circumstances may require:

Form of admissions.

---

**Or. XII, r. 3** [= ,, = *Or. XII, r. 3* = En. Or. 32, r. 3]

**Or. XII, r. 4** [= ,, = *Or. XII, r. 4* = En. Or. 32, r. 4]

I. The English Rule has the words "unless at the trial or hearing the Court or a Judge certify that the refusal to admit was reasonable, or unless the Court or a Judge shall at any time otherwise order or direct" in the place of the words "unless the Court otherwise directs."

II. This Rule provides the procedure by which a party may call upon his opponent to admit facts. The only penalty which is incurred by refusing to admit facts pursuant to a notice given under this Rule is that, if a party unreasonably refuses to admit facts he may be ordered to pay the costs occasioned by proving the facts which ought to have been admitted.

**Or. XII, r. 5** [= ,, = *Or. XII, r. 5* = En. Or. 32, r. 5]

Judgment on admissions.

6. Any party may at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the Court may upon such application make such order, or give judgment, as the Court may think just.

Affidavit of signature.

7. An affidavit of the pleader or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof is required.

Notice to produce documents.

8. Notice to produce documents shall be in Form No. 12 in Appendix C, with such variations as circumstances may require. An affidavit of the pleader, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

---

**Or. XII, r. 6** [= „ = *Or. XII, r. 6* = En. Or. 32, r. 6]

This Rule enables a party to apply for any judgment or order to which on admissions made in the pleadings or otherwise he may be entitled. The words "or otherwise" are not confined to cases where notice of admission has been given under Rule 1 or admission made pursuant to notice under Rule 4.

**Case Law.**

The Court can pass an order or judgment under Order XII, Rule 6, of the Code only when there is an unequivocal admission of the liability imposed. It would be unduly enlarging the scope of the Rule to make it include the decision of a part of the case arrived at by a separate enquiry or trial for the purpose of giving relief to the plaintiffs in the suit. An enquiry of that character is not contemplated by the Rule.—
**19 T. L. J.**, *984*.

---

**Or. XII, r. 7** [= „ = *Or. XII, r. 7* = En. Or. 32, r. 7]

"Sufficient evidence" has been held to mean *prima facie* but not conclusive evidence.

---

**Or. XII, r. 8** [= „ = *Or. XII, r. 8* =En. Or. 32, r. 8]

"Whenever a party wishes to give in evidence at the trial a document which is in the possession or under the control of the opposite party, he must give such opposite party notice to produce that document. If he does not give such notice he will not be allowed at the trial to adduce secondary evidence as to the document: whereas, if he gives the notice he will, on proof of such notice and that the document is in the possession or control of the opposite party, be allowed to give secondary evidence of it. It is not, however,

Costs.

9. If a notice to admit or produce specifies documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

## ORDER XIII.

### Production, Impounding and Return of Documents.

Documentary evidence to be produced at first hearing.

1. (1) The parties or their pleaders shall produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.

(2) The Court shall receive the documents so produced: Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

---

necessary to give notice to produce a notice to produce or as a rule any other notice."—*Yearly Practice for 1925.*

**Or. XII, r. 9** [= ,, = *Or. XII, r. 9* = En. Or. 32, r. 9]

This Rule is intended to put a stop to the practice of setting out in the notice to admit and produce long lists of documents which are not necessary to be included therein.

**Order XIII**: "This Order adopts in substance the existing provisions relating to production and return of documents."—*Notes on Clauses.*

**Or. XIII, r. 1** [= Ss. 133, 135 Para 1 = *Or. XIII, r. 1*]

I. **1.** Section 133 of the old Regulation corresponding to Sub-Rule (1) ran as follows :—

"133. *Documentary evidence to be in readiness at first hearing.*—The parties or their pleaders shall bring with them and have in readiness at the first hearing of the suit, to be produced when called for by the Court, all the documentary evidence......... and all documents which the Court at any time before such hearing has ordered to be produced."

**2.** The first Para of Section 135 of the old Regulation which corresponds to Sub-Rule (2) was :—

"135. *Documents to be received by Court.*—The Court shall receive the documents respectively produced by the parties at the first hearing, provided that the documents produced by each party be accompanied by an accurate list thereof prepared in such form as the High Court may, from time to time, direct."

II. See note under Rule 14 of Order VII.

III. For Form for List of documents produced, see Appendix I, Form No. 5.

Effect of non-production of documents.

2. No documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of Rule I shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof; and the Court receiving any such evidence shall record the reasons for so doing.

Rejection of irrelevant or inadmissible documents.

3. The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

Endorsements on documents admitted in evidence.

4. (1) Subject to the provisions of the next following Sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:—

(*a*) the number and title of the suit,

(*b*) the name of the person producing the document,

(*c*) the date on which it was produced, and

(*d*) a statement of its having been so admitted;

and the endorsement shall be signed or initialled by the Judge.

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following Rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

---

**Or. XIII, r. 2** [= S. 134
= *Or. XIII, r. 2*]

**Or. XIII, r. 3** [= S. 135, Para 2
= *Or. XIII, r. 3*]

**Case Law.**

The lower Court finally rejected *in toto* the pro-note sued on, in the case, as inadmissible in evidence; and this the Zillah Judge was competent to do (see Sections 135 and 137, C. P. C.). The omission to endorse the rejection on the back of the document, as provided in Section 137, does not vitiate the order of rejection (F. B.).—

**20 T. L. R., 41.**

Endorsements on copies of admitted entries in books, accounts and records.

5. (1) Where a document admitted in evidence in the suit is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

(2) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished—

(*a*) where the record, book or account is produced on behalf of a party, then by that party, or

(*b*) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

(3) Where a copy of an entry is furnished under the foregoing provisions of this Rule, the Court shall, after causing the copy to be examined, compared and certified in manner mentioned in Rule 17 of Order VII, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

Endorsements on documents rejected as inadmissible in evidence.

6. Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (*a*), (*b*) and (*c*) of Rule 4, Sub-rule (1), together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge.

Recording of admitted and return of rejected documents.

7. (1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under Rule 5, shall form part of the record of the suit.

---

Or. XIII, r. 4 } = Ss. 136, 137 { = *Or. XIII, r. 4*
Or. XIII, r. 5 } { = *Or. XIII, r. 5*
Or. XIII, r. 6 } { = *Or. XIII, r. 6*
Or. XIII, r. 7 } { = *Or. XIII, r. 7*

I. The Sections corresponding to these Rules were as follow :—

"136. *No documents to be placed on record unless proved. Proved documents to be marked and filed.*—No document shall be placed on the record unless it has been proved or admitted in accordance with the

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them.

---

Law of Evidence for the time being in force. Every document so proved or admitted shall be endorsed with the number and title of the suit, the name of the person producing it, and the date on which it was produced. The Judge shall then endorse with his own hand a statement that it was proved against or admitted by (as the case may be) the person against whom it is used. The document shall then be filed as part of the record:

*Entries in shop-books.*—Provided that (*a*) if the document is an entry in a shop-book or other book, the party on whose behalf the book is produced may furnish a copy of the entry and (*b*) if the document is an entry in a record produced from a public officer or by a public officer, or an entry in a book belonging to a person other than a party on whose behalf the book is produced, the Court may require a copy of the entry to be furnished (i) where the record or book is produced on behalf of a party, then by that party, or (ii) where the record or book is produced in obedience to an order of the Court acting on its own motion, then by either or any party; and the copy of the entry may be endorsed as aforesaid and shall be filed as part of the record, and the Court shall mark the entry and shall then return the book or record to the person producing it.

If a party required under this Section to furnish a copy of an entry in a record or book fails to comply with the requisition, the Court may cause the copy to be made and order the cost thereof to be levied by attachment and sale of the movable property of the defaulting party.

All documents produced at the first hearing and not so proved or admitted shall be returned to the parties respectively producing them.

*Explanation.*—Every document to prove which evidence is adduced, shall, for the purposes of this and the following Sections, be deemed "proved," although the Judge may not believe such evidence."

"137. *Rejected documents to be marked, and returned.*—When a document so proved or admitted is filed and relied on as evidence by either party, but the Court in a subsequent stage considers it inadmissible, it shall be further endorsed with the addition of the word "rejected," and the endorsement shall be signed by the Judge.

All rejected documents shall then be returned to the party who produced them."

II. The above two Sections were taken from the Indian Code of 1882 as amended by Act VII of 1888, and corresponded to Sections 141, 141-A, 142 and 142-A, of that Code. It is these latter Sections that are reproduced, with some alterations, as Rules 4, 5, 6 and 7 respectively of the present Indian Code.

III. In regard to the Explanation found in Section 136 quoted above, the Statement of Objects and Reasons appended to the Bill which became Regulation II of 1065 said:—"An Explanation is added to Section 141 (British) to explain the meaning of the word 'proved'. In the absence of this Explanation, it may happen that some Judges, when they disbelieve evidence adduced to prove a document, may refuse to place such documents on the record. In practice, such documents are not, in British India, returned to the parties. They ought not to be returned, so long as the contingency of their being found genuine, continues. It is hardly necessary to add that an Appellate Court might come to a conclusion different from that arrived at by the Court of first instance."— *S. O & R., Para 20.*

8. Notwithstanding anything contained in Rule 5 or Rule 7 of this Order or in Rule 17 of Order VII, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

Court may order any document to be impounded.

9. (1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under Rule 8 be entitled to receive back the same,—

Return of admitted documents.

(*a*) where the suit is one in which an appeal is not allowed, when the suit has been disposed of; and

(*b*) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of :

Provided that a document may be returned at any time earlier than that prescribed by this Rule if the person applying therefor delivers to the proper officer a certified copy to be substituted for the original and undertakes to produce the original if required to do so :

Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless.

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.

---

In regard to the next Section 137, the same Statement of Objects and Reasons said:—"A slight alteration has been made in the wording of Section 142 (British) so as to prevent the idea that every Judge is bound to hear evidence respecting every inadmissible document. This alteration is consistent with the latter part of Section 140 (British)."— *S. O & R., Para 21.*

[Section 140 referred to corresponds to Section 135, Para 2, which is reproduced in Rule 3 above]

**Case Law.**

See under Rule 3 above.

---

**Or. XIII, r. 8** [ = S. 138 = *Or. XIII, r. 8*]

---

**Or. XIII, r. 9** [ = S. 139 = *Or. XIII. r. 9*]

10. (1) The Court may of its own motion, and may in is discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

Court may send for papers from its own records or from other Courts.

(2) Every application made under this Rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this Rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

---

The corresponding Section 139 of the old Regulation was as follows :—

"139. *When document admitted in evidence may be returned.*—In suits in which an appeal is not allowed, when the suit has been disposed of, and in suits in which an appeal is allowed, when the time for preferring an appeal from the decree has elapsed, or, if an appeal has been preferred, then after the appeal has been disposed of, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit, and placed on the record, shall, unless the document is impounded under Section 138, be entitled to receive back the same :

*When document may be returned before time limited.*—Provided that a document may be returned at any time before either of such events, if the person applying for such return delivers to the proper officer a certified copy of such document to be substituted for the original :

*Certain documents not to be returned.*—Provided also that no document shall be returned which by force of the decree, has become void or useless.

*Receipt to be given for returned documents.*—On the return of a document which has been admitted in evidence, a receipt shall be given by the party receiving it, in a receipt-book to be kept for the purpose.

**Or. XIII, r. 10** [ = S. 132=*Or. XIII, r. 10*]

*Sub-Rule (1).*—The words "or public office" which occurred after the words "from any other Court," and the words "or any official paper not being a privileged document" which occurred after the words "or proceeding," have been omitted.

*Sub-Rule (2).*—The second Para of Section 132 corresponding to this Sub-Rule was :—"Every application made under this Section shall show how the record...... for the purpose of justice ; and shall also be verified as hereinbefore provided for the verification of plaints."

The words now omitted were inserted in the old Regulation in view "to retain, in the hands of the Courts, the power of sending for records from public offices according to the existing law and practice." They were not in the Indian Code of 1882.—

*S. O & B., Para 19.*

11. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

Provisions as to documents applied to material objects.

---

## ORDER XIV.

### Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon.

1. (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

Framing of issues.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds : (*a*) issues of fact, (*b*) issues of law.

(5) At the first hearing of the suit, the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this Rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

---

**Or. XIII, r. 11** [=S. 140 = *Or. XIII, r. 11*]

---

**Or. XIV, r. 1** [= S. 141, Paras 1-5 & 7 = *Or. XIV, r. 1*]

1. In Sub-Rule (2), the words "or a defendant must allege in order to constitute his defence" are new.

2. In Sub-Rule (5), the words "to the Court" which occurred between "appears" and "to depend," have been omitted.

**Case Law.**

1. The particular attention of the Courts is drawn to Section 26 (old Code) to see that pleadings are not unnecessarily prolix or in argumentative form. The causes of action and the matters of defence should be stated as concisely as possible.

[Section 26 of Regulation II of 1037 ran as follows :—

"If the plaint do not contain the several particulars hereinbefore required to be specified therein, or if it contain particulars other than those required to be specified, whether relevant to the suit or not, or if the statement of particulars be unnecessarily prolix, or if the plaint be not subscribed and verified as hereinbefore required, the Court may reject the plaint, or at its discretion may allow the plaint to be amended."— **1 T. L. R.,** ***48.***

**2.** Issues are to be framed regarding the "questions" at issue between the parties and not regarding each particular item of evidence which may be adduced to support or disprove the position of either party with regard to such question.—

**3 T. L. R. App.,** ***11.***

**3.** The necessity of formally recording issues on disputed questions of fact or law and taking evidence thereon has been repeatedly enjoined upon the lower Courts.

The probability of the defence turning out to be false is no ground for refusing a fair trial to a defendant, who is entitled to full opportunity to prove the defence by any admissible evidence.— **5 T. L. R.,** ***76.***

**4.** When the parties or their Vakils are at issue upon a question of law—on whom lies the *onus probandi* is a question of law—it is the duty of the presiding Judge to decide such point and to call upon the parties to adduce evidence in the order determined by him.— **6 T. L. R.,** ***136.***

**5.** It is always inexpedient to allow parties to go to trial on issues of fact, without some distinct and specific allegation on the one side and denial on the other.—

**7 T. L. R.,** ***117.***

**6.** Though no specific issue (in regard to possession of plaint property) has been given, the parties have adduced their evidence and the Courts have expressed their opinion on that evidence. Possession being the chief matter to prove title in the case, the particular attention of the parties must have been directed to it in adducing evidence. The argument that the omission to frame a formal issue on possession has placed the party at a disadvantage has no force, so far the case is concerned. Both the lower Courts have considered the question and have recorded distinct finding on it. Nothing has been urged to doubt the soundness of that finding.— **9 T. L. R.,** ***17.***

**7.** Where the Court itself has not done its duty of recording carefully the several issues raised by the pleadings of the parties, the issues were framed and the case sent back for retrial.— **9 T. L. R.,** ***129.***

**8.** It is for the plaintiff to set forth his case distinctly, so that the defendant may have the opportunity of answering and meeting the case by evidence at the trial, and the issue should embrace only points affirmed on one side and denied on the other.— **9 T. L. R.,** ***153.***

**9.** The trial Court should have taken the defendant's statement as to why he pleaded limitation, whether he pleaded adverse possession, when it began and whether plaintiff had notice of the same. These facts should have been ascertained and noticed in the issue paper.— **16 T. L. R. App.,** ***46.***

**10.** Where there is a doubt as to the nature of a plaint, the Court should take a statement from the plaintiff or his Vakil regarding the real nature of the suit before raising issues.— **17 T. L. R.,** ***88.***

**11.** As both the parties to the suit have adduced evidence on the question of management (of plaint properties), they must be presumed to have gone to trial on the understanding that that was one of the questions in issue, and it cannot be said under the circumstances that the discussion of that question was a surprise on the appellants. They have not taken the objection in their appeal memo and their Vakil does not say that he has any additional evidence to adduce on the point. The objection based on the absence of an express

Issues of law and of fact.

2. Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

---

issues as to management is therefore disallowed (F. B.).— **21 T. L. R.**, *183*.

**12.** The plaintiff's objection that no express issue as to whether the fish (the supply of which was contracted for) was available was untenable, as it was covered by the general issue as to damages for breach of contract. The evidence adduced by the plaintiff himself proved the point.— **3 S. D.**, *102*.

**13.** The point urged for the appellant was that there was no issue and no finding as to whether the fourth defendant was a minor. There was certainly no specific issue on the point, and it was urged that, had an issue been framed, the defendants would have adduced evidence to show that the fourth defendant was a minor at the date of Exhibit A (Pro-note). However, in a defferent form, the question of the age of the fourth defendant did come before the Court. The fourth defendant was very backward in giving evidence on the subject of his age. The defence had not been prejudiced by the absence of any issue.— **12 T. L. J.**, *151*.

**14.** The issue raised in the case and tried is general in its wording, and the mind neither of the parties nor of the Courts below, seems to have been specifically directed to the statutory qualification the Section contains. The issue was therefore remitted for retrial.— **38 T. L. R.**, *179* (=**13 T. L. J.**, *323*).

**15.** It is an irregular procedure for the Judge not to record the pleadings in his own hand but allow them to be recorded by the Vakils appearing in the case. It is necessary to impress upon the lower Courts the necessity of a rigid compliance with the statutory provisions and the standing orders of the High Court on the subject.— **44 T. L. R.**, *1* (=**17 T. L. J.**, *693*).

**16.** Rule 64 of the Civil Courts Guide is as follows :—

"The following procedure shall ordinarily be followed by the Courts in settling issues in original suits and other proceedings of a similar nature under special circumstances :........"

The use of the word "ordinarily" in Rule 64 indicates that the preparation of issue paper in the manner stated therein, need not be done in certain cases. Where, for instance, the contest is only nominal or the issue to be decided is a simple one based on a clear statement of fact in denial of plaintiff's claim, the trial Court may frame issues without going through the procedure prescribed under the Rule.— **18 T. L. J.**, *836*.

**Or. XIV, r. 2** [= S. 141, Para 6 = *Or. XIV, r. 2*]

The words "or any part thereof" after the words "the case" are new.

---

3. The Court may frame the issues from all or any of the following materials:—

Materials from which issues may be framed.

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;

(b) allegations made in the pleadings or in answers to interrogatories delivered in the suit;

(c) the contents of documents produced by either party.

4. Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

Court may examine witnesses or documents before framing issues.

---

**Or. XIV, r. 3** [= S. 142 = *Or. XIV, r. 3*]

1. In Clause (a), the words "or persons" which occurred after the words "such parties" have been omitted.

2. In Clause (b), the word "pleadings" has been substituted for the words "plaint or in the written statements (if any) tendered in the suit."

**Case Law.**

From the contentions of the parties noted in the issue paper at the settlement of issues, it appeared that the plaintiff relied on an aditional ground not stated in the pleadings; and an issue was raised and tried in regard to that contention. This the Court was competent to do under Section 142, C. P. C.— **18 T. L. R.,** *111.*

**Or. XIV, r. 4** [= S. 143 = *Or. XIV, r. 4*]

The changes made in the old Section are:—

1. The words "to be fixed by the Court" which occurred after the words "a future day" have been omitted.

2. The words "(subject to the Rules contained in the Law of evidence)" have been replaced by the words "(subject.........in force)."

3. The words "possession or power it is" have been substituted for "hands it may be."

Power to amend and strike out issues.

5. (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

Questions of fact or law may by agreement be stated in form of issues.

6. Where the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing that, upon the finding of the Court in the affirmative or the negative of such issue,—

(*a*) a sum of money specified in the agreement or to be ascertained by the Court, or in such manner as the Court may direct shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement;

(*b*) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or

(*c*) one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

---

**Or. XIV, r. 5** [= S. 144 = *Or. XIV, r. 5*]

In Sub-section (1), the words "matters in" before the word "controversy" are new.

**Or. XIV, r. 6** [= S. 145 = *Or. XIV, r. 6*]

1. Compare Rule 1 of Order XXXV.

2. As to Form for Agreement of parties as to Issue to be tried, see Appendix I, Form No. 1.

Court if satisfied that agreement was executed in good faith, may pronounce judgment.

7. Where the Court is satisfied, after making such inquiry as it deems proper,—

(*a*) that the agreement was duly executed by the parties,

(*b*) that they have a substantial interest in the decision of such question as aforesaid, and

(*c*) that the same is fit to be tried and decided.

it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the Court;

and shall, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement; and, upon the judgment so pronounced, a decree shall follow.

---

## ORDER XV.

### Disposal of the Suit at the first hearing.

Parties not at issue.

1. Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

One of several defendants not at issue.

2. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants.

---

**Or. XIV, r. 7** [= S. 146 = *Or. XIV, r. 7*]

Section 146 of the old Regulation was as follows:—"146. If the Court is satisfied... ...decided,

it *may* proceed.........finding or *opinion* thereon .........

and *may*, upon the finding.............. agreement;

and upon the judgment so given, decree shall follow and *may be executed in the same way as if the judgment had been pronounced in a contested suit*"

---

**Or. XV, r. 1** [= S. 147 = *Or. XV, r. 1*]

---

**Or. XV, r. 2** [= S. 148 = *Or. XV, r. 2*]

---

3. (1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit :

Parties at issue.

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.

(2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.

4. Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment, or may, if it thinks fit, after framing and recording issues, adjourn the suit for the production of such evidence as may be necessary for its decision upon such issues.

Failure to produce evidence.

---

## ORDER XVI.

### Summoning and Attendance of Witnesses.

1. At any time after the suit is instituted, the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.

Summons to attend to give evidence or produce documents.

---

Or. XV, r. 3 [ = S. 149 = *Or. XV, r. 3*]

Or. XV, r. 4 [= S. 150 = *Or. XV, r. 4*]

Or. XVI, r. 1 [ = S 154 = *Or. XVI, r. 1*]

I. Section 154 of Regulation II of 1065, corresponding to Rule 1 ran as follows :—

2. (1) The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

Expenses of witness to be paid into Court on applying for summons.

---

"154. *Summons to attend to give evidence, or produce documents.*—The parties or their pleaders may, at any time after the issue of the summons to the defendant, if the summons be for the final disposal of the suit, or after the issues have been recorded, if the summons to the defendant be for the settlement of issues only, obtain, on application to the Court, summonses to witnesses or other persons to attend, either to give evidence or to produce documents, and in any such summons the names of any number of persons may be inserted."

The above Section was a reproduction of Section 136 of Regulation II of 1087. That Section was adopted in preference to Section 159 of the Indian Code of 1882, as it was considered "inconvenient and productive of unnecessary expense, to summon witnesses, in cases not posted for final disposal, before the settlement of issues".—

*S. O & R., Para 22.*

II. The present Rule is the same as Rule 1 of Order XVI of the British Code, which Rule corresponded to Section 159 of the Code of 1882 except as to the time for application for witness-summons. Section 159 ran thus:—"The parties may, *after the summons has been delivered or sent for service on the defendant, whether it be for the settlement of issues only, or for the final disposal of the suit* obtain, on application to the Court or to such officer as it appoints in this behalf, before the day fixed for such settlement or disposal, as the case may be, summonses to persons whose attendance is required either to give evidence or to produce documents."

II. For Form of summons to Witnesses, see Appendix B, Form No. 12.

**Case Law.**

To obtain a summons for a party to a Civil suit as a witness, it is necessary for the party applying for such summons to satisfy the Court that there are "sufficient grounds in support of such application."—

**2 T. L. R., *6*.**

It is not the business of the Court, but of Vakils employed, to see that proper steps are taken to secure the attendance of witnesses.— **8 T. L. R., *158*.**

Under Or. XVI, r. 1, a party has no doubt the right to summon witnesses and to insist that their attendance shall be enforced. But this right is subject to the control of the Court, though such control will be exercised sparingly and only in exceptional cases to prevent abuse of its processes. Where the application is not made *bona fide* or where it is necessary in the exercise of the Court's inherent powers to prevent the abuse of its own processes, the Court has the power to refuse to issue summons to the witnesses.— **17 T. L. J., *704*.**

When application for summons to witnesses was not made ten days before the date fixed for trial as provided for under Rule 82 of the Civil Courts Guide, the Court need not adjourn the case, but could dispose of it.— **18 T. L. J., *1017*.**

Experts.

(2) In determining the amount payable under this Rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

Scale of expenses.

(3) Regard shall be had, in fixing the scale of such expenses, to any Rules made in that behalf by the High Court.

Tender of expenses to witness.

**3.** The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

Procedure where insufficient sum paid in.

**4.** (1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the movable property of the party obtaining the summons; or

---

5. Order XVI, Rule 1, says that parties may obtain summonses for witness at any time before the suit is instituted. Rule 82 of the Civil Courts' Guide requires that application for issue of processes should be made not less than ten days before the date fixed for trial. Though the party may not claim as a matter of right that the Court should issue processes even in contravention of the above Rule of the Civil Courts' Guide, having regard to the provisions of Order XVI, Rule 1, the Courts should ordinarily issue such processes at the risk of the party even though not applied for within the time prescribed by Rule 82 of the Civil Courts' Guide.— **19 T. L. J.,** *1231.*

**Or. XVI, r. 2** (1) [ = S. 155, Para 1 = *Or. XVI. r. 2 (1)*]
" " **r. 2** (2) [ = " = " *r. 2 (2)*]
" " **r. 2** (3) [ = S. 155, Para 2 = *Or. XVI, r. 2 (3)* ]

*Sub Rule (2).*—"A Court, while bound to fix a reasonable amount to defray the expenses of a witness, may allow only 'travelling expenses' and charges of a similar nature, not including compensation for loss of time. In ordinary cases this rate is, perhaps, sufficient and not unreasonable; but the case of expert or scientific witnesses is recognised even in England as exceptional and it is proposed to extend the power conferred by the Section to granting a fee to such a witness." (Statement of Objects and Reasons)— *India Gazette dated 21-12-1901, Pt. V.*

**Or. XVI, r. 3** [ = S. 156 = *Or. XVI, r. 3*]

the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Expenses of witnesses detained more than one day.

(2) Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the movable property of such party, or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Time, place and purpose of attendance to be specified in summons.

5. Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

Summons to produce document.

6. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

---

**Or. XVI, r. 4** [= S. 157 = *Or. XVI, r. 4*]

1. In Sub-Rule (1), the words "or reasonable remuneration" have been added after the words "to cover such expenses".

2. In Sub-Rule (2), the words "such party" have been substituted for the words "the party at whose instance he was summoned."

**Or. XVI, r. 5** [S. 158 = *Or. XVI, r. 5*]

For Form of summons to witness, see Appendix B, Form No. 12.

**Or. XVI, r. 6** [= S. 159 = *Or. XVI, r. 6*]

Power to require persons present in Court to give evidence or produce document.

7. Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

Summons how served.

8. Every summons under this Order shall be served as nearly as may be in the same manner as a summons to a defendant, and the Rules in Order V as to proof of service shall apply in the case of all summonses served under this Rule.

Time for serving summons.

9. Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

Procedure where witness fails to comply with summons.

10. (1) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, the Court shall, if the certificate of the serving officer has not been verified by affidavit, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching the service or non-service of the summons.

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

---

**Or. XVI, r. 7** [= S. 160 = *Or. XVI, r. 7*]

The word "actual" which occurred before the words "possession or power" has been omitted.

---

**Or. XVI, r. 8** [= S. 161 = *Or. XVI, r. 8*]

The words "under this Order" have been substituted for the words "to a person to give evidence or produce a document".

**Or. XVI, r. 9** [= S. 162 = *Or. XVI, r. 9*]

---

**Or. XVI, r. 10** [= S. 163 = *Or. XVI, r. 10*]

I. The corresponding Section of Regulation II of 1065 was as follows :—

"163. *Attachment of property of absconding witness.*—If the serving officer certify

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under Rule 12:

Provided that in non-appealable cases no order for the attachment of immovable property shall be made.

---

to the Court that the summons for the attendance of a person, either to give evidence or to produce a document, cannot be served, the Court shall examine the serving officer on oath touching the non-service;

and upon being satisfied that such evidence or production is material, and that the person for whose attendance the summons has been issued is absconding or keeping out of the way for the purpose of avoiding the service of the summons, may issue a proclamation requiring him to attend to give evidence, or produce the document, at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door of the house in which he ordinarily resides.

If he does not attend at the time and place named in such proclamation, the Court may, in its discretion, at the instance of the party on whose application the summons was issued, make an order for the attachment of the property of the person whose attendance is required, to such amount as the Court thinks fit, not exceeding the amount of the costs of attachment and of the fine which may be imposed under Section 165:

Provided that, in non-appealable cases, no order for the attachment of immovable property shall be made."

II. Rule 10 to 18 of the British Indian Code of 1908 contain the several changes made in the corresponding Sections 168 to 175 of the previous Code of 1882. These changes were mainly proposed in the Bill of 1901 to amend the Code of 1882. In the Notes on Clauses appended to the Statement of Objects and Reasons for that Bill, the amendments were explained as follows:- "The provisions of the Code have undoubtedly proved insufficient to secure the due attendance of witnesses and the prompt despatch of business. At present, coercive process cannot, where a summons is unserved, be issued until the Court is satisfied, usually after the issue of repeated summonses, that a witness is absconding or avoiding service; and even then the party seeking the witness's attendance is required to move the Court. When the Court is duly satisfied of a witness's intentional default, still it cannot attach property without first issuing a proclamation with due formality, and, on the expiry of the time fixed thereby, the party desiring the attendance of the witness has again to move the Court, which may or may not, in its discretion, order attachment. No remedy like that provided by Section 278 for the disposal of the claims of third parties to attached property has been provided, and apparently a suit would lie against a purchaser. If a witness is served with a summons and simply refuses to obey it, he cannot be fined unless the party summoning him actually procures his arrest under a warrant and causes him to be produced in custody before the Court. In order to remove these defects, it is now proposed to abolish the distinction between the avoidance of service in Section 168 and the failure to comply in Section 174, and to

11. Where, at any time after the attachment of his property, such person appears and satisfies the Court,—

If witness appears, attachment may be withdrawn.

(*a*) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and,

(*b*) where he has failed to attend at the time and place named in a proclamation issued under the last preceding Rule, that he had no notice of such proclamation in time to attend,

the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

---

shift from the party to the Court the initiative in issuing coercive process where the Judge, without necessarily being 'satisfied' by any elaborate enquiry, 'sees reason to believe' that a witness has intentionally failed to attend or has knowingly avoided service. The Court is, in such cases, ordinarily to issue a proclamation and, if it thinks fit, at once to follow the proclamation up with a warrant of arrest and the attachment of property, ending up, by an automatic process, with sale in satisfaction of a fine not exceeding five hundred rupees. This attachment, like all others under the Chapter, is to be governed by the summary procedure applicable to execution proceedings, and the right of suit in respect of claims advanced by third parties is to be limited to that conferred by Clause 283. The Judge is also to be invested with the power, analogous to that already exercised by a Magistrate of binding over witnesses in their recognisances to attend at further hearings, and, over and above this machanical safeguard, the procedure relative to proclamation with a warrant and an attachment will be capable of being enforced against persons departing without the leave of the Court. At the same time, one of the causes of the failure to execute process will be removed by investing the Courts with the reasonable power of issuing warrants with bail instead of compelling a witness, as at present, to submit to the humiliation of production in custody before he can obtain an order for his release. Finally, as the Courts are to be responsible for enforcing compliance with their own processes, it is proposed to make special provision with reference to the recovery of court-fees and other incidental expenses."—*India Gazette dated 21-12-1901, Pt. V.*

III. For Form of Proclamation requiring attendance of witness, see Appendix B, Forms Nos. 13 and 14.

For Form of Warrant of attachment of property of witness, see Appendix B, Form No. 15.

For Form of Warrant of arrest of witness, see Appendix B, Form No. 16.

---

**Or. XVI, r. 11** [ =S. 164 = *Or. XVI, r. 11*]

The corresponding Section of Regulation II of 1065 ran as follows :—

"164. *If witness appears, attachment may be withdrawn.*—If, on the attachment of his property, such person appears and satisfies the Court that he did not abscond or

Procedure if witness fails to appear.

12. The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under Rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any:

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be released from attachment.

---

keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit."

**Or. XVI, r. 12** [= S. 165 = *Or. XVI, r. 12*]

I. The corresponding Section of Regulation II of 1065 ran as follows :—

"165. *Procedure if witness fails to appear.*—If such person does not appear, or appearing, fails to satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court may impose upon him such fine not exceeding five hundred rupees as the Court thinks fit, having regard to his condition in life and all the circumstances of the case, and may order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of the said fine, if any;

Provided that, if the person whose attendance is required pays into Court the costs and fine as aforesaid, the Court shall order the property to be released from attachment.

Nothing in this Section authorises a Munsiff to impose a fine of more than two hundred rupees."

II. There was no provision in the Indian Code of 1882 similar to that contained in the second para of the old Section 165 given above. The Statement of Objects and Reasons to the Bill which became Regulation II of 1065 said :—

"23. It is not desirable that a Munsiff should have the power of fining witnesses for disobedience to his summonses in a sum equal to his pecuniary jurisdiction. His power to fine is limited to Rs. 200 in this Section and in Section 169".—See Rule 18 *Infra*.

**Case Law.**

See Or. XX, r. 4.—**43 T. L. R.,** *48* (=**16 T. L. J.,** *392*).

13. The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this Order as if the person whose property is so attached were a judgment-debtor.

Mode of attachment.

14. Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person other than a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

Court may of its own accord summon as witnesses strangers to suit.

15. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

Duty of persons summoned to give evidence or produce document.

16. (1) No person so summoned and attending shall depart unless and until (*a*) he has been examined or has produced the document and the Court has risen, or (*b*) he has obtained the Court's leave to depart.

When they may depart.

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to bind himself with or without security as the Court may think fit to attend at the next or any other hearing and, in default of his doing so, may order him to be detained in the civil prison.

---

**Or. XVI, r. 13** [ = ,, = *Or. XVI, r. 13*]

**Or. XVI, r. 14** [ = S. 166 = *Or. XVI, r. 14*]

**Or. XVI, r. 15** [ = S. 167 = *Or. XVI, r. 15*]

**Or. XVI, r. 16** (1) [ = S. 168 = *Or. XVI, r. 16* (1)]

,, **r. 16** (2) [ = ,, = ,, = *Or. XVI, r. 16* (2)]

I. Sub-Rule (1) reproduces Section 168 of Regulation II of 1065. The corresponding Sub-Rule (1) in the British Indian Code

Application of Rules 10 to 13.

**17.** The provisions of Rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of Rule 16.

Procedure where witness apprehended cannot give evidence or produce document.

**18.** Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.

---

is :—"A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of." This provision had been suggested by the Indian Select Committee who reported on the 1901 Bill. That Committee said :—"In view of the possible necessity for recall we think that witnesses should be required, as a general rule, to attend at each hearing until the suit has been disposed of. It is a common practice involving no hardship for a witness desirous of departing earlier to obtain the express permission of the Court.— *India Gazette dated 21-3-1903, Pt. V.*

II. Sub-Rule (2) is new. The corresponding Sub-Rule of the British Indian Code, runs as follows :—"(2) On the application of either party.........so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison." The above was the wording adopted in the original Bill. But the Select Committee modified it in the way enacted.

III. For Form of Warrant of committal, see Appendix, B, Form No. 17.

**Or. XVI, r. 17** [= Ss. 169, 170 = *Or. XVI, r. 17*]

---

**Or. XVI, r. 18** [= S. 169, penultimate Para = *Or. XVI, r. 18*]

I. The Sections of Regulation II of 1065 corresponding to Rules 17 and 18 ran as follow :—

"169. *Consequences of failure to comply with summons.*—If any person, on whom a summons to give evidence or produce a document has been served, fails to comply with the summons, or if any person so summoned and attending departs in contravention of Section 168, the Court may order him to be arrested and brought before the Court :

Provided that no such order shall be made when the Court has reason to believe that the person so failing had a lawful excuse for such failure.

When any person so brought before the Court fails to satisfy it that he had a lawful excuse for not complying with the summons, the Court may sentence him to fine not exceeding five hundred rupees.

19. No one shall be ordered to attend in person to give evidence unless he resides—

No witness to be ordered to attend in person unless resident within certain limits.

(*a*) within the local limits of the Court's ordinary original jurisdiction, or

(*b*) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the court-house.

---

*Explanation.*—Non-payment or non-tender of a sum sufficient to defray the expenses mentioned in Section 155 shall be deemed a lawful excuse within the meaning of this Section.

*Procedure when witness apprehended cannot give evidence or produce documents.*—If any person so apprehended and brought before the Court cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and on such bail or security being given, may release him.

Nothing in this Section authorizes a Munsiff to impose a fine of more than two hundred rupees."

"170. *Procedure when witness absconds.*—If any person so failing to comply with a summons absconds or keeps out of the way, so that he cannot be apprehended and brought before the Court, the provisions of Sections 163, 164 and 165 shall, *mutatis mutandis*, apply."

II. For Form of Warrant of committal, see Appendix B, Form No. 18.

---

**Or. XVI, r. 19** [= S. 171 = *Or, XVI, r.* 19]

The corresponding Section of Regulation II of 1065 was as follows :—

"171. *Persons bound to attend in person.*—No one shall be bound to attend in person to give evidence or to be examined in Court unless he resides—

(*a*) within the local limits of its ordinary original jurisdiction, or

(*b*) without such limits and at a place less than fifty miles from the Court-house."

**Case Law.**

The requisition to put in personal appearance to a person residing at a distance of more than 50 miles from the place where the Court is held and beyond the limits of the Court's jurisdiction is not legal.—**3 T. L. R.,** ***19.***

[Note the new Rule.]

---

**20.** Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

Consequence of refusal of party to give evidence when called on by Court.

---

**Or. XVI, r. 20** [=S. 172 = *Or. XVI, r. 20*]

The corresponding Section of Regulation II of 1065 ran as follows :—

"172. *Consequence of refusal of party to give evidence when called on by Court.*—If any party to a suit who shall be ordered to attend to give evidence or produce a document shall, without lawful excuse, fail to comply with such order, or attending or being present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his actual possession or power, the Court may, in its discretion, either pass a decree against him, or make such order in relation to the suit as the Court thinks fit."

**Case Law.**

**1.** The default of a co-defendant to appear as a witness is no valid ground for giving a decree against the others, and the power of the Court to pass judgment against a defaulting party could not be exercised except on the day on which the default occurred.

If, as in the case, the Court chose to adjourn the hearing to another day on some other ground, the Court must be presumed to have condoned the fault, or, at least, waived the power of giving judgment for default, and there is nothing in the law to warrant the exercise of such power (which it is not only not imperative upon the Courts to exercise, but should be put in force with great discrimination) on a subsequent day. **3 T. L. R., *6*.**

**2.** The provisions of this Section apply only to cases of contumacious refusal by party to appear in obedience to the order of the Court.— **3 T. L. R., *19*.**

**3.** On the defendant's application, a notice was issued to plaintiff's Vakil to produce his client on a certain day. The notice should have been to the plaintiff, though it may have been served on the Vakil. The form of the notice was therefore not such as the law contemplated. However, the plainsiff admitted that his Vakil gave him intimation of the notice. The case was adjourned, and the plaintiff had no notice of any of the days to which the case stood adjourned.

*Held.*—(1) In the absence of a written notice to plaintiff requiring his attendance on any of the adjourned hearing days, a Court is not justified in visiting a party with the extreme penalty provided by Section 156 (old) a penalty which is intended to meet only cases of contumacious refusal to obey the orders of the Court.

(2) A verbal order to a Vakil to produce his client does not satisfy the requirements of the law.— **7 T. L. R., *14*.**

Fol.— 24 T. L. R., 72.

**4.** For want of timely notice, the plaintiff was not able to attend before the lower Court and give evidence on the day appointed. From the perusal of the diary, it was seen that the neglect of his Vakil to communicate to plaintiff the orders of the Court as they were passed was the sole cause of his non-attendance. The 3rd defendant, therefore, was fairly entitled to claim exemption from the costs of this appeal which was brought about by the negligence of the plaintiff's Vakil. The proper course was to excuse plaintiff's default and to exonerate 3rd defendant from liability to pay the costs.— **7 T. L. R., *18*.**

21. Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.

Rules as to witnesses to apply to parties summoned.

---

5. A defendant was summoned to appear as a witness in the case on a certain date. But as he was unable to be present that day, he got an adjournment. Meanwhile, on the application of the plaintiff, the Court passed an order that the defendant should be produced on a particular date and the same was communicated to his Vakil. But the notice issued to defendant was returned unserved and the defendant defaulted to appear.

*Held.*—Such a default was no contumacious defiance of authority so as to justify the Court in exercising its discretionary powers under the penal provisions of Section 172, Civil Procedure Code.

"The power given by the Section is one which ought, from its very nature and effect, to be used with caution and forbearance and was clearly intended to be enforced only in extreme cases of contumacious refusal to give evidence as to material facts in the case." To render a person liable to the penalty attaching under the Section, it must be shown that notice has been duly served (F. B.).— **24 T. L. R.,** ***72.***

6. Where the lower Court gave a decree for plaintiff under Section 172, C. P. C., owing to defendants' having vexatiously withheld their accounts which were material to plaintiff's case :

*Held.*—The High Court saw no grounds to interfere with the discretion of the lower Court under Section 172, C. P. C.— **K. P.,** ***266.***

7. Where a peremptory order was given to plaintiff to appear as witness on a certain day with a threat of the dismissal of the suit in case of default, and the plaintiff defaulted, the Court has power to dismiss the suit under Section 172 of the C. P. C. The Court's failure to pronounce judgment on the very day of default cannot save the plaintiff from the legal consequences of her contempt.

The lower Court was not wrong in refusing to examine plaintiff's witnesses on the day of default.— **2 S. D.,** ***196.***

8. To enable a valid order to be passed under Section 172, the party must be called upon to do something and must disobey the order. It is not enough that the party's Vakil should be called on to cause the party to do something. The notice should have been addressed to the party, though, possibly, it might be served on his Vakil. There is no other Section in the Code which would empower the Court to decree a suit against a party for failure to obey an order of the Court.— **14 T. L. J.,** ***586.***

---

**Or. XVI, r. 21** [=S. 173 = *Or. XVI, r. 21*]

Section 173 of the old Regulation was as follows :—

"173. *Rules as to witnesses to apply to parties summoned.*—Whenever any party to a suit is summoned, either at the instance of the Court or on the application of the other party, to give evidence or to produce a document, the Rules as to witnesses contained in this Code shall apply to him so far as they are applicable."

---

## ORDER XVII.

### Adjournments.

Court may grant time and adjourn hearing.

**1.** (1) The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

Costs of adjournment.

(2) In every such case the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded.

---

**Or. XVII, r. 1** [= S. 151 = *Or. XVII, r. 1*]

**1.** In Sub-Rule (2), the words "In every such case" have been substituted for "In all such cases."

**2.** In the Proviso, the words "beyond the following day" have been added; and the words "by the Judge with his own hand" which occurred after the word "recorded" at the end, have been omitted.

#### Case Law.

**1.** The defendant was fairly entitled to collect true evidence, though of a circumstantial nature, and adduce the same at the trial of the case. She had no opportunity to seek out evidence, the suit being decided at the first hearing for the settlement of issues. In fact, there had been no proper trial in the case, and the decree passed without a proper trial in the manner contemplated by the Code of Civil Procedure could not be supported. The lower Court's decree was reversed.— **5 T. L. R.,** *76*.

**2.** A preliminary objection raised by the appellant was that, owing to the intervention of holidays he could not get copies of the issues in time to apply for summons earlier. Any how, on the ground alleged by him, he ought to have applied to the lower Court for an adjournment under Section 151, C. P. C. offering to pay the costs of the same. This had not been done. To allow such excuses in appeal would be to encourage laxity in the procedure of the lower Courts. The objection was therefore disallowed (F. B.). **1 S. D.,** *302*.

**3.** *Held* (Govinda Pillai, J. dissenting).—The High Court has power under Section 568 of the Civil Procedure Code [new Section 89] to revise an interlocutory order regarding the payment of the day's costs passed under Section 151 of the Civil Procedure Code in case of any irregularity in the matter (F. B.).— **19 T. L. R.,** *82*.

**4.** One of the defendants in a Civil suit applied for an adjournment to enable him to file his written statement. The Court ordered the applicant to pay day's costs to the opposite party, and adjourned the case to a future day for settlement of issues;

*Held.*—The order requiring payment of day's costs was illegal, as the adjournment to enable the filing of written statement was not granted.

The order distinctly stated that the case stood adjourned for settlement of issues and not for the filing of the written statement.— **4 T. L. J.**, *288.*

**5.** Under the provisions of Section 151, a Court is competent to impose terms on a party applying for an adjournment when granting his application. But the Court is bound to give what can be called a sufficient or reasonable opportunity for its being complied with. "There is no foundation for the broad contention that the Court could not make an appropriate order as to costs. The second paragraph of the Section gives the Court ample discretion as to the particular directions to be given in the matter of costs occasioned by the adjournment. At the same time we are of opinion that, in the circumstances of the case, the Court might have adjourned the case to a subsequent date and made the hearing on that date conditional upon the payment of costs before that date. Such an order would have enabled the plaintiff or his legal adviser to comply with the order for costs." (36 Cal., 566).

In the case, the direction that the day's costs should be paid into Court before the evening of that day was clearly one which gave no reasonable or sufficient opportunity for its being obeyed by the defendant or his Vakil. On this ground, the decree was set aside and suit remanded for trial (F.B).— **8 T. L. J.**, *199.*

**6.** Section 151 of the Code of 1065 enables the Court, for sufficient cause shown, to grant time to the parties or to any of them, from time to time, at any stage of the suit.

Under Article 302 of the Civil Courts' Guide, the applications for postponing the hearing of cases should be made by a petition endorsed with the consent of or on notice to all parties who have entered appearance and the same should be supported by evidence to be given on affidavits. Order XIX, Rule 3, requires affidavits to be confined to such facts as the declarant is able of his own knowledge to prove, except on interlocutory applications on which statements of his belief may be admitted, provided that reasonable grounds thereof be set forth.

When statements are made partly based on knowledge and partly on belief, the affidavit must clearly express how much is a statement of the deponent's knowledge and how much is a statement of his belief, and the grounds must be stated with sufficient particularity to enable the Judge to decide whether it would be safe to act upon the deponent's belief.

So far as applications for adjournment are concerned, the affidavits required to be filed should clearly set forth the grounds upon which the postponement is prayed for and must contain averments which could constitute the evidence contemplated in Section 151. The provisions are laid down with a view to avoid unnecessary and undesirable prolongation of the suit by the parties and to enable the Courts to grant time to parties on being satisfied that the prayer therefor has been made *bona fide.* The affidavits are insisted upon in such cases with a view to penalise false and reckless statements made with the intent of evading the salutory provisions contained in the Code.

The policy of the Legislature is to allow evidence to be adduced by affidavits as much as possible, taking care, however, to have the declarants in Court whenever the same is considered essential in the interests of justice. If the true scope of the provisions relating to affidavits is clearly realised and the requirements laid down therein are strictly complied with, the intention of the Legislature to relieve the litigant public from the inconvenience, unnecessary expense and delay in the matter of adducing

Procedure if parties fail to appear on day fixed.

**2.** Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

---

evidence would be carried out. On the other hand, the continuance of the irregular and the irresponsible drafting of affidavits and the countenancing of the same by the Court would be to reduce the whole proceedings to a farce and only tend to defeat the object of the Legislature in making these provisions.

Affidavits not in conformity with the provisions should perforce be rejected.— **43 T. L. R.,** *165.*

---

**Or. XVII, r. 2** [= S. 152 = *Or. XVII, r. 2*]

**Case Law.**

**1.** When a case is disposed of under Section 135 (of Regulation II of 1037), it cannot be re-admitted as having been heard *ex parte*. The decision was not an *ex parte* decision and consequently could not be set aside on an application as if it were an *ex parte* decree.

The defendant in the case applied for a review, or re-hearing or re-trial, the result being that the case was restored to the file and a decision passed reversing that originally entered for the plaintiff. This procedure was wholly irregular. As the re-admission was made wholly without jurisdiction, it was set aside on appeal.

[Section 135 referred to was as follows :— "If either party to a suit to whom time may have been granted shall fail to produce his proofs, or to cause the attendance of his witnesses, or to perform any other act for which time may have been allowed, the Court shall proceed to a decision of the suit on the record, notwithstanding such default."]— **1 T. L. R.,** 50.

Diss.—10 T. L. R., 151.

**2.** It was objected to for first defendant that plaintiff's suit which had been once dismissed for default of appearance on the day fixed for production of evidence and after the settlement of issues, ought not to have been restored to the file on a mere application under Section 108 [see Or. IX, r. 6]. As the first dismissal of the suit could not be treated as a decision on the merits, the order for restoring the case to the file under Section 108 could not be found fault with. In 1 Mad. 287, where, as in this case, issues were recorded and a date fixed by the Court of its own motion for production of evidence, and plaintiff failed to appear on this latter date, it was held that Section 148 (corresponding to Section 135 of Regulation II of 1037) was inapplicable, the case not being one which had been adjourned in favour of either party to enable him to produce his proofs (F. B.).— **10 T. L. R.,** *151.*

**3.** After settlement of issues, the suit was adjourned from time to time at the request of the parties. On the last occasion when the case was taken up, the defendant's Vakil applied for adjournment, but neither the plaintiff nor her Vakil put in an appearance. The Court rejected the application and decided the suit against the plaintiff. The plaintiff applied under Section 98 C. P. C., [= Or. IX, r. 9] for restoration of the suit but her application was rejected on the ground that the suit had been disposed of not under Section 152 C. P. C., but "on the merits after several adjournments after the settlement of issues."

*Held* (on appeal by the plaintiff).—

The Court must be deemed to have dismissed the suit for default under Section 152 C. P. C., and the plaintiff's application for restoration was well-founded and should be granted.

If on a date to which the suit stands adjourned, whether at the instance of a party or otherwise, both parties or either of them fail to appear, the Court ought to proceed under Section 152 C. P. C., and if on the said date there is no such default of appearance but there is such default as is contemplated by Section 153 C. P. C., action should be taken under the latter Section. Sections 152 and 153 C. P. C., are independent and mutually exclusive and the one is not intended to overlap the other.

Both Sections 152 and 153 (Rules 2 and 3) contemplate default. Whereas in Section 152 provision is made for the failure of the parties to appear in Court when a case is taken up on the date to which the hearing is adjourned, the next Section prescribes the procedure to be followed when a party to whom time has been granted, fails to have his evidence ready or to perform any other act necessary to the further progress of the suit. Reading the Sections together, one is easily convinced that the one is not intended to over-lap the other. The view that, where a party not only fails to appear but also fails to produce evidence or to perform any other act necessary to the further progress of the suit, Section 152 is inapplicable, but the provisions of Section 153 ought to be availed of by the Court, is not consistent with the scheme of the Code. To sustain such a view, some such words as 'to appear or' after the word 'fails' have to be introduced into Section 153. Having regard to the persistency of the British Indian Legislature in substantially retaining the wording of Section 158 in the newly enacted Code of 1908 [Or. XVII, r. 3], the intention of the Legislature must be gathered from the language used to express it. One point of difference between the language of Section 152 and that of Section 153 is worth noting. In the latter Section, it is enacted that '*notwithstanding such default*' (*i e.*, failure to produce evidence &c.,), the Court may proceed to decide the suit forthwith. In the other Section, however, where a party's failure to appear is dealt with, no corresponding phrase is inserted, but it is merely said that the Court may proceed to dispose of the suit. Whatever be the reason for this point of distinction, it cannot be said to be devoid of significance. Probably the expressions 'to dispose of' and 'to decide' used in Section 152 and Section 153 respectively, have to be interpreted in the light of the above distinction. While the disposal of the suit under Section 152 entitles the aggrieved party to get rid of the order against him by making an application in due course, the decision under Section 153 compels him to appeal therefrom, if he wants the decision to be set aside. It may even be that, though a disposal of the suit for default of appearance may be a bar to a fresh suit based on the same cause of action, it has not the effect of *res judicata* to the fullest extent as in the case of a decision of the suit contemplated by Section 153. The disposal of the suit for the default specified in Section 152 is, therefore, intended to be distinguished from the decision of the suit, where the default is of the particular kinds enumerated in Section 153.

The most appropriate construction of the law appears for these reasons to be to regard Section 152 and Section 153 as independent and mutually exclusive.

In 41 Cal. 956, it was laid down that the points of distinction between Rules 2 and 3 are (1) Rule 2 applies to hearings adjourned at the instance of the Court and Rule 3 to those adjourned at the instance of a party who wishes to do some act necessary to the progress of the suit, but has defaulted; (2) where there are materials on the record, the proper procedure to follow is what is prescribed by Rule 3. But,

Court may proceed notwithstanding either party fails to produce evidence, etc.

**3.** Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.

---

there is no justification for distinguishing the scope and operation of Rules 2 and 3 as suggested in the above case. The language of Rule 2 ought not to be so restrictively interpreted as to confine its scope to adjournments made at the instance of the Court, nor is it always easy to determine in a case whether the adjournment is ordered by the Court *suo motu* or at the party's instance. Further, there is no warrant for reading into the provisions of Rule 3, the qualification "where there are materials on the record". The question whether there are such materials is not easy to decide. The vagueness of this condition is likely to lead to further confusion.—

**38 T. L. R.,** *122*
**(=13 T. L. J.,** *204***).**

Rel.—45 T. L. R., 291.

**4.** In Rule 2 of Order XVII, the basis of the decision is the default. On the other hand, under Rule 3, the decision is in spite of the default. The former Rule contemplates the non-appearance of the parties or any of them, while the latter assumes the appearance of the parties and contemplates some other default than non-appearance. Before Rule 3 can apply, there must be a decision on the records as they stand, and the default, be it what it may, should not be made the ground of decision. Again, under the same Rule, time should be granted to a party to perform some act for the further progress of the suit.— **19 T. L. J.,** *698.*

**5.** The principles to be borne in mind in determining whether, in any case, there was appearance or not, are:—

Firstly.—If the party or his pleader is not present in Court, there could be no appearance as contemplated in the provisions of Order IX, so far as such party is concerned.

Secondly.—No such appearance could be held to have been entered even if the party or his pleader or both are present and their application for time is refused whereupon they retire from the conduct of the case. Such retirement need not expressly be stated to the Court, the same being liable to be gathered from the circumstances made out in the case.

Thirdly.—The expression of inability to conduct or a proposal to retire from the conduct of the case must be made when the case is taken up for trial on a particular date. Such intimation given by the party or his agent or his pleader after participating in the conduct of the case, the same being not in connection with applications for the grant of time, would not justify such conduct being held to constitute an appearance within the meaning of the above order.

Fourthly.—The *bona fides* of the party with respect to the default referred to above is not a matter which will have a material bearing in the determination of the question of appearance, as the same has to be taken into account only in disposing of an application under Order IX, Rule 13.

**45 T. L. R.,** *291.*

**6.** See also—

Or. IX.— **19 T. L. J.,** *643.*
Or. IX, r. 3.—**13 T. L. J.,** *101.*
**19 T. L. J.,** *421.*
" " r. 6.—**15 T. L. J.,** *368.*
" " r. 8.—**22 T. L. R.,** *262.*
" " r. 13.—**32 T. L. R.,** *128.*

**Or. XVII, r. 3** [= S. 153=*Or. XVII, r. 3*]

### Case Law.

**1.** As the deed of sale on which the plaintiff's suit was based was insufficiently stamped, the lower Court called on him to pay the penalty required under the Stamp Regulation within one month. Plaintiff applied for a review of the order, and the application was rejected. As the penalty had not been paid, the Judge ordered the dismissal of the suit. This order was upheld.

The request of the plaintiff's Vakil for time to pay the penalty was declined by the High Court, as plaintiff had been given abundance of time by the lower Court. His suit could not proceed without the deed being put in evidence, and he having put himself out of Court by his conduct, the appeal was dismissed.— **9 T. L. R.,** ***183.***

**2.** A decision on the record under Section 135 of the Civil Procedure Regulation II of 1087 has all the legal effects of an adjudication on the merits for purposes of *res judicata.* [For Section 135 referred to see under previous Rule.]— **12 T. L. R.,** ***194.***

Ref.—32 T. L. R., 32
(=6 T. L. J., 126).

**3.** Section 153 of the Civil Procedure Code does not authorise a Judge to dismiss a plaint because the plaintiff to whom time was granted to file fresh plaints for the further progress of the suit failed to perform the same, but only to proceed to decide the suit forthwith notwithstanding such default.— **15 T. L. R.,** ***118.***

**4.** Suit for declaration that plaintiff is entitled to an equity of redemption in plaint properties. The plaintiff fixed the market value at eight thousand and odd fanams while the defendant in his written statement contended that its value was only 800 and odd fanams. The District Judge thereupon ordered the issue of a commission at plaintiff's cost to ascertain the market value of the property and on the plaintiff's failure to deposit the amount accepted the amount mentioned in the written statement and returned the plaint for presentation to the proper Court.

*Held.*—The proper procedure for the Judge should have been to dismiss the suit under Section 153, Civil Procedure Code. The question of jurisdiction being at the fore-front of a litigation, the suit cannot progress till it is decided, and if the plaintiff would not obey an order necessary to the further progress of the suit, the Court had inherent powers to dismiss the suit because on the materials before it, it could not decide the suit on the merits.

In 21 Mad., 403, it was impliedly held that, if a plaintiff had been ordered to pay the defendant's day costs as a *condition* precedent to the plaintiff's being allowed to continue the further progress of the suit, his suit might be dismissed on default of his compliance with that order.— **23 T. L. R.,** ***232.***

**5.** The Karanavan of a Malabar Tarwad brought a suit to set aside a Pattah. The parties entered into an oath agreement under which the plaintiff was to take oath. The plaintiff having failed to take oath, the suit was dismissed. Subsequently, another member of the same Tarwad brought the present suit for the same relief. It was contended for the defendants that the decree in the prior suit barred the subsequent suit,

*Held.*—The decree in the prior suit oprated as ***res judicata.***

The plaintiff in the former suit undertook with the consent of the defendants and with the approval or consent of the Court, to furnish the Court with evidence which was to be treated as ***the evidence*** or as ***conclusive evidence*** in support of his case. He failed to do so. The Court thereupon dismissed the suit, that is, it held that the then plaintiff's case had not been established. The decision of a Court so arrived at, is as much a decision on the merits

## ORDER XVIII.

### Hearing of the Suit and Examination of Witnesses.

Right to begin.

1. The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

Statement and production of evidence.

2. (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

---

against a plaintiff, as a decision of the Court allowing the plaintiff's suit in terms of the oath agreement, if the oath had been taken, would have been. It is a decision on the records as they then stood before the Court, similar to a decision passed by a Court under Section 153.—

**32 T. L. R.**, *32* (= **6 T. L. J.**, *136*).

6. See also—

Or. IX, r. 8.—**19 T. L. J.**, *421*.
" " r. 8.—**22 T. L. R.**, *262*.
" XVII, r. 2.—
**1 T. L. R.**, *50*.
**38 T. L. R.**, *122* (=**13 T. L. J.**, *204*).
**19 T. L. J.**, *698*.
**45 T. L. R.**, *291*.

---

Or. XVIII, r. 1 [ = S. 174, Expln. = *Or. XVIII, r. 1* ]

---

Or. XVIII, r. 2 (1) [ = S. 174 = *Or. XVIII, r. 2 (1)* ]
" " r. 2 (2) [ = S. 175, Para 1 = *Or. XVIII, r. 2 (2)* ]
" " r. 2 (3) [ = S. 175, Para 2 = *Or. XVIII, r. 2 (3)* ]

1. In Sub-Rule (2) the words "and may then......whole case" are new.

2. Para 2 of the old Section 175 was:—"The party beginning is then entitled to reply".

**Case Law.**

See Or. XIV, r. 1.—**5 T. L. R.**, *76*.
**6 T. L. R.**, *136*.

---

Evidence where several issues.

3. Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

Witnesses to be examined in open Court.

4. The evidence of witnesses in attendance shall be taken in open Court orally on oath or affirmation (according to such Rules as the High Court may, in that behalf, prescribe), in the presence and under the personal direction and superintendence of the Judge.

---

**Or. XVIII, r. 3** [= S. 175, last Para = *Or. XVIII, r. 3*]

---

**Or. XVIII, r. 4** [= S. 176 = *Or. XVIII, r. 4*]

I. The corresponding Rule in the British Indian Code is :—"4. The evidence of the witnesses in attendance shall be taken orally in open Court in the presence and under the personal direction and the superintendence of the Judge."

II. The difference in the wording of the two Rules is due to the absence of a Regulation corresponding to the British Indian Oaths Act and the consequent necessity to make provision for administration of oaths to witnesses.

**Case Law.**

1. The usual practice is said to be not to examine the witnesses for plaintiff and defendant on the same day. This practice entails hardship on, and inconvenience to, the parties and witnesses and should be put a stop to. When the examination of witnesses in any case has once begun, it should, as a rule, be continued from day to day until all the witnesses in attendance in the case, have been examined. This would avoid the heavy expenses which the parties are subjected to, by having to take out fresh summonses for the appearance of witnesses on the adjourned dates.—**3 T. L. R. App.,** ***64.***

2. The refusal of the Munsiff to examine three witnesses produced before him on plaintiff's behalf at the last hearing could not be supported. The matter would have been different, if the application of the plaintiff had been to adjourn the hearing for the purpose of summoning additional witnesses not named in the original list. In the case, some of plaintiff's witnesses named in the original list were said to have turned hostile to plaintiff, and three other men were actually produced in Court on plaintiff's behalf, and the plaintiff was, in the circumstances, entitled to have the evidence of these men recorded by the Court. The case was remanded to take the evidence of the three witnesses, and also try certain other questions.— **10 T. L. R.,** ***132.***

---

How evidence shall be taken in appealable cases.

5. In cases in which an appeal is allowed, the evidence of each witness shall be taken down in writing, in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative and, when completed, shall be read over in the presence of the Judge and of the witness, and the Judge shall, if necessary, correct the same, and shall sign it.

The Judge shall require the witness to sign the deposition taken down in a language understood by the witness. In case of refusal, the Judge shall ascertain and record the reasons assigned by the witness for refusing to sign the deposition.

No deposition of a witness shall be treated as invalid for the sole reason that it is not signed by the deponent.

---

**Or. XVIII, r. 5** [= S.177
= *Or. XVIII, r. 5*]

I. This Rule reproduces Section 177 of Regulation II of 1065, with the difference (1) that, in the first Para, the words "and also in the presence of the parties or their pleaders" which occurred after the words "of the witness" have been omitted; and (2), that in the third Para, the words "Provided that" which occurred in the beginning before the words "no deposition" have been omitted.

II. Para one of this Rule is the same as Section 182 of the Indian Code of 1882 and the corresponding Rule in the present Code. Paras 2 and 3 do not occur either in the old or the new Indian Code.

The Statement of Objects and Reasons appended to the Bill which became Regulation II of 1065 explained as follows the addition of the two Paras :—"Judges, as a measure of precaution, require the witnesses to sign their deposition taken down in the language understood by them. The addition made legalizes this salutary practice. A witness who is unwilling to sign the deposition has only to give the reasons for the same to be recorded by the Court. It will be observed that, for the legal validity of the deposition, the witness' signature is not necessary where the reasons for refusal to sign are recorded."— *S. O & R., Para 26.*

III. In the 1901 Bill to amend the Indian Code of 1882, a provision was proposed for the witness signing his deposition, if he admitted its correctness; and the Notes on Clauses to that Bill said :—"It seems expedient, if only in order to secure uniformity with Clause 192 [see Rule 15 *Infra*] to require a witness's signature to his deposition. As a matter of fact signatures are very largely taken; and the practice is useful in making deponents hesitate before resiling from their prior testimony." (This provision, however, was not adopted).—

*India Gazette*
*dated 21-12-1901, Pt. V.*

IV. The passage in the first Para requiring the presence of the parties or their pleaders was omitted by the Indian Select Committee on the 1901 Bill because they were "strongly of opinion that the validity of a deposition should not be vitiated by the departure of litigants or practitioners who,

**When deposition to be interpreted.**

**6.** Where the evidence is taken down in a language different from that in which it is given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it is given.

**Memorandum when evidence not taken down by Judge.**

**7.** Where the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

**When evidence may be taken in English.**

**8.** Where all the parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down.

**Any particular question and answer may be taken down.**

**9.** The Court may, of its own motion or on the application of any party or his pleader, take down any particular question and answer, or any objection to any question, if there appears to be any special reason for so doing.

**Questions objected to and allowed by Court.**

**10.** Where any question put to a witness is objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

---

if they desire to object to the record, should remain in attendance."—

*India Gazette dated 21-3-1903, Pt. V.*

---

**Or. XVIII, r. 6** [= S. 178 = *Or. XVIII, r. 6*]

---

**Or. XVIII, r. 7** [= S. 179 = *Or. XVIII, r. 8*]

---

**Or. XVIII, r. 8** [= S. 180 = *Or. XVIII, r. 9*]

---

**Or. XVIII, r. 9** [= S. 181 = *Or. XVIII, r. 10*]

The words "or cause to be taken down" which occurred after the words "take down" have been omitted.

---

**Or. XVIII, r. 10** [= S. 182 = *Or. XVIII, r. 11*]

Remarks on demeanour of witnesses.

11. The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

Memorandum of evidence in unappealable cases.

12. In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

Judge unable to make such memorandum to record reasons of his inability.

13. (1) Where the Judge is unable to make a memorandum as required by this Order, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court.

(2) Every memorandum so made shall form part of the record.

Power to deal with evidence taken before another Judge.

14. (1) Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing Rules as if such evidence or memorandum had been taken down or made by him or under his direction under the said Rules and may proceed with the suit from the stage at which his predecessor left it.

(2) The provisions of Sub-rule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under Section 23.

---

**Or. XVIII, r. 11** [= S. 183 = *Or. XVIII, r. 12*]

In considering the weight due to a witness, it is important to consider whether the witness tried to gain time by pretending not to understand any particular question though easy; whether he volunteered any and what statement; whether he appeared an unwilling witness, &c., &c. Remarks of a Court of first instance on such points are of considerable value to an Appellate Court.— 3 T. L. R. App., *6.*

**Or. XVIII, r. 12** [= S. 184 = *Or. XVIII, r. 13*]

**Or. XVIII, r. 13** [= S. 185 = *Or XVIII, r. 14*]

**Or. XVIII, r. 14** [= S. 186 = *Or. XVIII, r. 15*]

The corresponding Section of Regulation II of 1065 ran as follows :—

15. (1) Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

Power to examine witness immediately.

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

(3) The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the suit.

16. The Court may at any stage of a suit recall any witness, who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

Court may recall and examine witness.

---

"186. *Power to deal with evidence taken down by another Judge.*—(1) Where the Judge taking down any evidence or causing any memorandum to be made, under this Chapter, is prevented by death, transfer or other cause, from concluding the trial of the suit, any successor to such Judge may deal with such evidence or memorandum, as if he himself had taken it down, or caused it to be made, and proceed with the suit from the stage at which his predecessor left it.

(2) The provisions of Sub-section (1) shall apply, so far as they can be made applicable, to a suit transferred under Section 21:

Provided that the High Court transferring a suit under that Section may, if it thinks fit, direct that the Court to which the suit is transferred shall recall all or any of the witnesses who have been examined and take their evidence afresh."

Or. XVIII, r. 15 [= S. 187 = *Or. XVIII, r. 16*]

I. 1. In Sub-Rule (1), the words "of any party" have been substituted for "of either party."

2. In Sub-Rule (3), the words "and the Judge shall, if necessary, correct the same and shall sign it" are new.

II. For Form of Notice to parties of the day fixed for examination of a witness about to leave jurisdiction, see Appendix I, Form No. 6.

Or. XVIII, r. 16 [= S. 188 = *Or. XVIII, r. 17*]

The words "and who has not departed in accordance with Section 168" which occurred after the words "has been examined" have been omitted.

17. The Court may at any stage of a suit inspect any property or thing concerning which any question may arise.

Power of Court to inspect.

## ORDER XIX.

### Affidavits.

1. Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such condition as the Court thinks reasonable:

Power to order any point to be proved by affidavit.

Provided that where it appears to the Court that either party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

2. (1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.

Power to order attendance of deponent for cross-examination.

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court, or the Court otherwise directs.

---

**Or. XVIII, r. 17** [= „ = *Or. XVIII. r. 18*]

**Or. XIX**: This Order corresponds to Chapter XVI of Regulation II of 1065. The latter consisted of four Sections 189-192, of which Sections 190 and 191 appear in this Order with some changes. For Section 192, see under the new Section 103. The remaining Section 189 has been omitted, and it was as follows:—

"189. *Power to order any point to be proved by affidavit.*—Affidavits made by a person who is dead or who cannot be found or who has become incapable of giving evidence or whose attendance cannot be procured without an amount of delay or expense which, under the circumstance of the case, appears to the Court unreasonable, may, at the discretion of the Court, be received to prove any issue or relevant fact."

**Or. XIX, r. 1** [= „ = *Or. XIX, r. 1*]

**Or. XIX, r. 2** [= S. 190 = *Or. XIX, r. 2*]

1. *Sub-Rule (1)*.—The words "upon any application" have been substituted for the words "In support of any application."

3. (1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted:

Matters to which affidavits shall be confined.

Provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same.

---

## ORDER XX.

### Judgment and Decree.

1. (1) The Court, after the case has been heard, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders.

Judgment when pronounced.

(2) A Judge may pronounce a judgment written but not pronounced by his predecessor.

Power to pronounce judgment written by judge's predecessor.

---

The words "or on its own motion" which occurred after the words "of either party" have been omitted.

The word "deponent" has been substituted for the word "declarant."

2. *Sub-Rule* (2).—This is new.

---

**Or. XIX, r. 3** [= S. 191 = *Or. XIX, r. 3*]

1. *Sub-Rule* (1).—The word "deponent" has been substituted for the word "declarant."

The old Proviso was :—"Provided that reasonable grounds thereof be set forth."

2. *Sub-Rule* (2).—This is new.

**Case Law.**

See Or. XVII, r. 1.—**43 T. L. R.,** ***165.***

**Or. XX, r. 1** (1) [= S. 193 = *Or. XX, r. 1*]

,, r. 1 (2) [= S. 194 = ,, *r. 2*]

I. For Sections 193 and 194 of Regulation II of 1065, see under Section 30 ***Supra.***

II. In the original Bill, Sub-Rule (2) was a separate Rule—2—, as in the British Indian Code. The Select Committee put Rules 1 and 2 of the original Bill as Sub-Rules (1) and (2) of Rule 1.

**Case Law.**

1. The acceptance of hearing notes from the Vakils in lieu of hearing them in open Court is irregular.— **19 T. L. J.,** ***455.***

2. See under Section 30 ***Supra.***

---

Language of Judgment.

2. (1) The judgment shall be written by the Judge in his own hand in the language of the Court or in English :

Provided that the judgment of District Courts need not be in the handwriting of the Judges.

(2) In cases where a judgment is not written by the Judge in his own hand, each page of the judgment shall be signed by him.

Judgment to be signed.

3. The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added to, save as provided by Section 116 or on review.

---

**Or. XX, r. 2** [ = Ss. 195, 196 = „ ]

I. Sections 195 and 196 of the old Regulation were as follow :—

"195. *Language of judgment.*—The judgment shall be written by the Judge in his own hand in the language of the Court or in English :

Provided that the judgments of the High Court and the District Courts need not necessarily be in the hand-writing of the Judges."

"196. *Translation of judgment.*—Whenever the judgment is written in English, the judgment shall, if any of the parties so require, be translated into the language of the Court, and the translation shall also be signed by the Judge or such officer as he appoints in this behalf."

II. The original Bill did not contain this Rule. It was put in by the Select Committee.

III. See Section 102 *Supra.*

**Case Law.**

Peishkars should strictly observe the rules of Civil Procedure in settling claims under Regulation III of 1067 (Land Acquisition).

As Section 9 of Regulation III of 1067 requires that judgments and decrees in compensation cases should be recorded in the manner prescribed in the Code of Civil Procedure, Peishkars should, under Section 195 of that Code, write their judgments in their own hand.

In the case, the decision was written in Malayalam by a clerk under the instructions of the Peishkar. This could not be accepted as a legal judgment or decree. It was set aside. The case should be restored to the file and re-heard by the Peishkar and fresh judgment recorded in the manner provided by law.— **14 T. L. R.,** *35.*

---

**Or. XX, r. 3** [ = S. 197 = *Or. XX, r. 3* ]

I. The corresponding Section of the old Regulation was as follows :—

"197. *Judgment to be dated and signed.*—The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it, and shall not be altered or added to, save to correct verbal errors or to supply some accidental defect not affecting a material part of the case, or on review."

II. *Re:* review, see Section 88 and Order XLV, Rule 1.

4. (1) Judgments in non-appealable cases need not contain more than the points for determination and the decision thereon.

Judgments in non-appealable cases.

(2) Judgments in all other cases shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

Judgments in other cases.

---

**Or. XX, r. 4** [ = S. 198 = *Or. XX, r. 4* ]

*Sub-Rule* (*1*).—The wording of the first para in Section 198 of the old Regulation was :—"*The* judgments *of the Courts* in non-appealable cases.........thereon."

**Case Law.**

**1.** A District Judge, in appointing a certain person as guardian of the person and properties of a minor under the Guardian and Wards Regulation, gave no reason for his order, nor even referred to the contentions of the parties or the evidence, if any, adduced in the case.

*Held.*—The order of the District Judge was passed under Regulation II of 1077, and under Section 43 of that Regulation, the order is appealable. It is necessary that a Court, disposing of a matter under that Regulation by an order that is subject to appeal, should write a judgment containing all the points referred to in para 2 of Section 198, C. P. C. The procedure prescribed in the Code of Civil Procedure is made applicable under Section 584 of the Code [new Section 105] to all proceedings in any Court of civil jurisdiction, other than suits and appeals. This Section has been interpreted to mean that the procedure prescribed in the Civil Procedure Code applies to applications for probate, guardianship, divorce and other similar matters. Applications under the Guardian and Wards Regulation partake, especially when contested, of the nature of suits; and to such applications the procedure laid down in the Civil Procedure Code with reference to the taking of evidence and the writing of judgment must be applied. The order of the lower Court is therefore reversed.—

**28 T. L. R., *53***
**(=3 T. L. J., *25*).**

Fol.—28 T. L. R., 197
(=3 T. L. J., 154).

**2.** The judgments in Small Cause suits must fully set forth all the points for determination, as also the decision upon each point, so that they may be intelligible when they come up for purposes of revision. The judgment of the Munsiff, in the case, does not show that he understood and considered the facts which would have a bearing upon the right decision of the case. The judgment is set aside as not in accordance with law and the suit remanded. The parties are not allowed to adduce fresh evidence.— **4 T. L. J., *107*.**

Ref.—5 T. L. J., 366.
32 T. L. R., 235.
Diss.—43 T. L. R., 286.

**3.** The judgment in a Small Cause Suit was as follows :—" The only point for determination is whether Exhibit A is genuine. I find it is not. In the result, etc."

*Held* (reversing the judgment).—The judgment was unsatisfactory as no reasons were given sufficient at least for a Revision Court to see whether the trying Court had applied its judicial mind to the matter before it.

The Legislature does not require Courts of small causes to write elaborate judgments as in original suits ; this is merely a matter of expediency and in the public interests.

Section 198, C. P. C., gives directions as to judgments in non-appealable cases, and this, no doubt, aims at conciseness and brevity.— **5 T. L. J.,** ***366.***

Ref.—32 T. L. R., 285.
Diss.—43 T. L. R., 286.

**4.** Under the existing law, the judgment of a Court exercising small cause powers need not contain anything more than the points that arise for determination in the case and the decisions thereon. In particular, it need not specify the reasons for such decision.

But it is necessary that the points for determination should be clearly, definitely and in the concrete formulated by the Court. The concrete questions for decision should be specified by the Court.

The judgment need only contain the decisions on the various points raised in the case. But the decisions must show that the material points in the case have been passed upon.

The compliance that will be enforced by the High Court is, not merely technical compliance, but substantial compliance with the provisions of the Code and such compliance is all that is necessary; the question whether in any particular case there has been such compliance, being for the most part one to be decided with reference to the nature and circumstances of that case.

When the judgment of a Court exercising small cause powers is not according to law as laid down in the Code, the High Court will, in the exercise of its revisional powers, as a rule, set aside the judgment and the decree based thereon, and remand the suit for fresh decision and (if need be) for re-trial also; the reason for this procedure being that the decisions in such cases must primarily be passed by the trial Courts.

In the case, instead of finding specific questions of fact, the lower Court had recorded only conclusions of law, thereby depriving the High Court of the only effective means of judging whether the decree on the facts found should be for the plaintiff or for the defendant. In other words, the judgment is no better than if no issues were formulated and the only decision were:— "The claim of the plaintiff is found against and dismissed with costs." Both the judgment and the decree founded upon it are therefore set aside.— **32 T. L. R.,** ***285.***

Ref.—17 T.L. J., 15,
17 T. L. J., 130.
Fol.—43 T. L. R., 286.

**5.** Where an Appellate Court fully adopts the reasoning and conclusions of the Court of first instance, it is not bound to set out the reasons for its decision with the same fullness as if it was deciding the suit in the first instance or as if it was reversing the first Court's decree.—

**13 T. L. J.,** ***131.***

**6.** The suit was on a promissory note, the genuineness of which was denied by the defendant. The plaintiff had to take all the coercive steps to get the two attesting witnesses to Court. When they were examined, they turned hostile, and the plaintiff cross-examined them. It was contended for the defence that, inasmuch as the witnesses were treated hostile by the plaintiff who called them, their evidence could not be utilised for establishing the genuineness of the promissory note.

***Held.***—The evidence of the witnesses had, no doubt, to be handled with the greatest caution. But simply because a witness has turned hostile to the party calling him, especially if the witness was one whom the party, in the circumstances of the case, was in a way compelled to call, his whole deposition should not be rejected, and it should not be utilised only to discredit him. When a party had to exhaust all the coercive steps sanctioned by the Procedure Code before he was able to get a witness to Court,

Court to state its decision on each issue.

**5.** In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

---

there was very little meaning on calling such a witness that party's own witness.— **43 T. L. R.,** *48* (= **16 T. L. J.,** *393*).

**7.** Judgments in non-appealable cases need contain only the points for determination and decision thereon. Although in arriving at a decision the Judge has to weigh the reasons for and against, to see which preponderate and to be governed by that preponderance, it is not obligatory on him to record the reasons for the decisions in judgments in non-appealable cases.

It is a well-known canon of interpretation of statutes that when the language of a statute is clear and unambiguous it must be interpreted in its ordinary sense, even though it leads to manifest absurdity, repugnance, mischief or injustice.

The word "decision" as used in Section 198 C. P. C., and Section 14 of the Civil Courts Regulation is comprehensive enough to include reasons also for the decision. "Decision" is explained as "a judgment or decree pronounced by a Court in settlement of a controversy submitted to it and by way of authoritative answer to the questions raised before it." "Decision" is not synonymous with "opinion." A decision of the Court is its judgment, the opinion is the reasons given for that judgment. It is not obligatory on the Judge to record the reasons for the decision in judgments in non-appealable cases. (*Mr. Justice Parameswara Menon and Mr. Justice Narayana Rao*).

*Per Joseph Thaliath, J. dissenting.*—The judgments in Small Cause suits should contain the reasons which induced the Court to come to a certain conclusion, and they are unsatisfactory if no reasons whatever are given, sufficient at least for a Revision Court to see whether the lower Court had applied its judicial mind to the matter before it.

Even though a strict interpretation of the relevant Sections may sustain the conclusions arrived at by a majority of the Judges, yet the fact should not be lost sight of that such an interpretation would render the High Court practically helpless to redress wrongs that may have been done by the subordinate Courts in the exercise of their Small Cause jurisdiction. If, in the interpretation of the Section, without doing violence to the language, a conclusion which would be manifestly to the greater advantage of the parties and more conducive to the better administration of justice, could be arrived at, such an interpretation should be adopted.— **43 T. L. R.,** *286.*

**8.** Under Section 198, C. P. C., the points for determination have to be set forth in the judgment.— **17 T. L. J.,** *15.*

**9.** Courts of Small Causes must raise the points for determination under Section 198, C. P. C., and when this provision has not been substantially complied with, the High Court will set aside such judgment and decree.— **17 T. L. J.,** *130.*

---

**Or. XX, r. 5** [ = S. 199 = *Or. XX, r. 5*]

**Case Law.**

**1.** If, in the opinion of a Judge, a question of fact is immaterial for the decision of a case, the evidence bearing on it ought to be left unconsidered and the question undetermined. But if it is in any way material —though not directly—the evidence ought to be properly weighed and the conclusion distinctly recorded.— **9 T. L. R.,** *107.*

6. (1) The decree shall agree with the judgment: it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit.

Contents of decree.

(2) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.

(3) The Court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.

---

2. When the plaintiff's claim is found unsustainable, the defence need not be gone into.— **12 T. L. R.,** *177.*

3. Care should be taken that the findings of the Court are not the result of inadvertence to and erroneous views of material facts and questions of law involved in the case.

In the case, the Munsiff has mixed up the evidence in all the connected suits and disposes of all the issues in a perfunctory manner. He begins by formulating certain propositions of law which are irrelevant to the controversy between the parties. His judgment is unsustainable.— **15 T. L. J.,** *521.*

**Or. XX, r. 6** (1) [= S. 201, Para 1 = *Or.* XX, *r. 6* (1)]

" **r. 6** (2) [= S. 201, Para 2 = *Or.* XX, *r. 6* (2)]

" **r. 6** (3) [= S. 216 = *Or.* XX, *r. 6* (3)]

I. The changes made are:—

1. *Sub-Rule* (*1*).—The words "*shall* agree" have been substituted for the words "*must* agree." The words "as stated in the register" which occurred after the words "of the claims" have been omitted.

2. *Sub-Rule* (*2*).—The words "and by whom or out of what property" have been substituted for the words "and by what parties."

3. *Sub-Rule* (*3*).—The words "by the other" have been substituted for the words "by another." The latter portion of the old Section was:—"against a sum which is admitted or is found in the suit to be due from the former to the latter."

II. For the last Paragraph of the old Section 201, see under Section 116 *Supra.*

III. For Form of decree in original suit, see Appendix D, Form No. 1.

**Case Law.**

1. A decree must be an adjudication on the "right claimed or defence set up" on the merits or on a question of law affecting the merits and not an adjudication on a mere right or defence relating to matter of procedure (F. B.).— **25 T. L. R.,** *63.*

2. The decree directed that if the plaintiff deposited in Court a lump sum within a certain date he should be treated as a subscriber by the defendants in their Chitty; and he should be entitled to his costs from the defendants and the defendants should bear their own. Plaintiff deducted the amount due to him as costs and deposited the balance.

Date of decree.

7. The decree shall bear date the day on which the judgment was pronounced, and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

Procedure where Judge has vacated office before signing decree.

8. Where a Judge has vacated office after pronouncing judgment but without signing the decree, a decree drawn up in accordance with such judgment may be signed by his successor or, if the Court has ceased to exist, by the Judge of any Court to which such Court was subordinate.

---

*Held.*—Though the only Sections relevant for the decision of the question are 216 and 243 [=Or. XX, r. 6 (3) and Or. XXI, r. 17], the question does not fall under the purview of any of the Sections of the Code. But in equity, he is entitled, while making the deposit, to take credit for the amount of the costs awarded to him by the decree.

**10 T. L. J.,** ***91.***

**3.** The plaintiff in the case claimed to set off the amount of costs payable to him under the decree against the mortgage amount payable by him. He can do this only when the terms of the decree will permit it to be done without doing violence to the direction contained in the decree. Reading the decree, it is clear that the Court directed that the mortgage amount payable to the mortgagee was to be kept at a particular figure till arrears of rent should reach that figure, and it was only thereafter that the liability of the defendant to pay enhanced rent arose. If it was the intention that the costs should be capable of being deducted from the mortgage amount, this direction would be clearly out of place. Besides, if a right in the mortgagor to deduct the costs were contemplated, the provision in the decree for interest on costs would be meaningless. Upon the specific language of the decree, no case for the application of Section 216 would arise.—

**11 T. L. J.,** ***398.***

Ref.—19 T. L. J., 459.
19 T. L. J., 519.

**4.** In the case, the abstract of the pleadings in a decree was treated as an entry in a public record made by a public servant in the discharge of his official duty, being specially enjoined by law to do the same, and was accordingly held relevant evidence under Section 35 of the Indian Evidence Act.

**16 T. L. J.,** ***277.***

**5.** See also—

Sec. 75.— **18 T. L. J.,** ***640.***
,, 116.— **2 T. L. J.,** ***163.***
**17 T. L. J.,** ***679.***
Or. XXI, r. 17.— **19 T. L. J.,** ***459.***
**19 T. L. J.,** ***519.***

---

**Or. XX, r. 7** [= S. 200= ***Or. XX r. 7*** ]

For Forms of Decree in original suit, see Appendix D, Form No. 1.

**Case Law.**

See Sec. 30.—**17 T. L. R.,** ***182.***

---

**Or. XX, r. 8** [= ,, = ***Or. XX, r. 8*** ]

This Rule is new and is intended "to meet the case in which, before signature of the decree, the Judge vacates office or the Court ceases to exist."— ***India Gazette dated 21-12-1901, Pt. V.***

---

9. Where the subject-matter of the suit is immovable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

Decree for recovery of immovable property.

10. Where the suit is for movable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be had.

Decree for delivery of movable property.

---

**Or. XX, r. 9** [= S. 202 = *Or. XX, r. 9*]

The corresponding Section of Regulation II of 1065 was as follows :—

"202. *Decree for recovery of immovable property.*—When the subject-matter of the suit is immovable property, and such property is identified by boundaries or by numbers in a record of Settlement or Survey, the decree shall specify such boundaries or numbers."

**Or. XX, r. 10** [= S. 203 = *Or. XX, r. 10*]

**Case Law.**

1. Plaintiff sued for recovery of an elephant together with the value of its chain wrongfully taken by the defendant. The lower Court gave a decree for delivery of the animal, but did not state the amount of money to be paid as an alternative, if delivery could not be had. The animal died after the decree of the lower Court had been passed.

*Held.*—Under Section 203 of the Civil Procedure Code, the decree should have specified the amount of money to be paid in case of non-delivery of the elephant. The decree was incomplete in that it did not contain an order for payment of a money compensation in default of such delivery.

The Appellate Court is bound to cure the defect in the lower Court's decree and to pass a legal decree capable of execution. Conversion consists in one's wrongfully possessing himself of the movable property of another under the pretence of his being the owner of such property and in actions for such conversion of chattels, the full value of the chattel at the time of the conversion is the measure of damages.

A Court can exercise its equitable power in reducing the damages, even after decree when any subsequent matter renders it unjust that the whole value of the converted chattel should be recovered (F. B.).—
**13 T. L. R.,** *221.*

2. When a bond provides only for return of the paddy grain lent with interest in paddy, the proper course for the Court is to pass a decree in accordance with Section 203 C. P. C. In other words it ought to give a decree for paddy and only as an alternative for the price thereof.—
**3 S. D.,** *190.*

Fol. —40 T. L. R., 181
(= 14 T. L. J., 419).

3. Where the decree was one for future rent payable in paddy and the decree did not fix any commutation rate, in execution commutation should be allowed at the market rate prevailing on the date of the execution application and not at the rates that prevailed on the dates when the paddy was due.

In this State, paddy is regarded very much in the same light as currency. It is loanable and a paddy loan is recoverable in

kind with interest at a special rate recognised by the law. If, on the date of the application, the judgment-debtor offered the quantity of paddy that was due, the decree-holder would be bound to accept it in discharge of the decree-debt. If paddy was not offered, then principle seems to require that he should be paid its equivalent in money as on that date.— **12 T. L. J.,** *59.*

Rel.—13 T. L. J., 43.
Ref.—14 T. L. J., 22.
40 T. L. R., 181
(= 14 T. L. J., 419).
43 T. L. R., 99
(= 17 T. L. J., 644).

**4.** In a suit to recover arrears of Michavarom payable in paddy, the paddy should be valued at the market rate on the date of suit and not on the date when it became due.— **13 T. L. J.,** *43.*

Ref.—14 T. L. J., 22.
40 T. L. R., 181
(= 14 T. L. J., 419).
43 T. L. R., 99
(= 17 T. L. J., 644).

**5.** In a suit to recover the arrears of Michavarom payable in paddy, the paddy should ordinarily be valued at the market rate on the date of suit, not on the date when it became due, except in cases where unreasonable advantage was intended to be taken.

Section 203 has no application to suits for recovery of paddy which is regarded in several respects as equivalent to money.— **14 T. L. J.,** *22.*

Ref.—40 T. L. R., 181
(= 14 T. L. J., 419).

**6.** (1) Section 203, C. P. C., merely lays down a law of procedure. It does not point out in what cases delivery of property should be decreed, but merely directs the Court to provide for payment of the value of movable property in cases where the delivery of such property is decreed.

It applies not only to suits for specific movable property but also to suits for the recovery of paddy in kind.

(2) In suits for the return of paddy the lender should sue for the paddy in the first instance and claim its value only in the alternative, unless there is anything to the contrary in the contract between the parties.

(3) A suit for the recovery of the value of the paddy loaned under a bond cannot be treated as a suit for damages and the value should be calculated as at the date of suit and not as at the date when it fell due under the bond.

(4) The decree should give an opportunity to the debtor to pay the paddy in kind.

*Per Chatfield, Ag. C. J. & Jacob, J.*— When paddy is loaned under a bond with the stipulation that the paddy was to be returned with interest in paddy, it is reasonable to hold that what the parties bargained for was for the return of paddy in kind and not for its value in money. It is well-known that in this country paddy is regarded very much in the same light as currency. It is loanable and carries interest at a specified rate recognised by the law. Numerous Chitty concerns are started where the subscription is paid in paddy, and the prize consists of a quantity of paddy. Paddy is in daily requirement for consumption and for payment to daylabourers in the agricultural tracts. Having regard to the custom and habits of the people dealing in the commodity, it is not unreasonable to presume that when a stipulation is made in a bond for the payment of paddy, the intention of the parties is that the payment should be made in paddy itself and not in its equivalent in money.

There is no reason why the operation of Section 203 should be restricted to suits for specific movables, when the Section in terms does not make any such restriction. A suit for the recovery of paddy loaned falls under this Section, though the suit is not strictly to recover the identical grains of

11. (1) Where and in so far as a decree is for the payment of money, the Court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.

Decree may direct payment by instalments.

(2) After the passing of any such decree, the Court may, on the application of the judgment-debtor and with the consent of the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit.

Order after decree, for payment by instalments.

---

paddy which had been loaned. The jurisdiction of the Court to decree a suit for the recovery of paddy is in no way curtailed by the provisions of the Civil Procedure Code as to the form of the decree or the method of its execution. If the Court thinks fit to grant a decree for the recovery of paddy in kind, Section 208 comes into play, and the Court has to state the amount of money to be paid in the alternative, as paddy is movable property.

*Raman Tampi, J.*—The Section (208) must be interpreted as laying down that, whenever the decree directs the delivery of any movable, the Court should alternatively provide for payment of the value thereof. The question whether in a particular instance the Court ought to decree delivery of any movable depends on other considerations.

The plaintiff is entitled in certain cases to claim delivery of a movable, but in other cases he cannot set up such a claim but must rest content with the value of the movable. Even where the plaintiff can as a matter of fact insist on the recovery of a movable and his claim is upheld and decreed, circumstances beyond his control and the Court's control may render it impossible, inconvenient or difficult to effectuate the decree. It is in view of all this, that an alternative decree is provided for as a precautionary measure in Section 208.—

**40 T. L. R.,** ***181***
**(=14 T. L. J.,** ***419*****).**

Ref.—44 T. L. R., 76
( = 18 T. L. J., 185).

**7.** Under Or. XX, r. 10, C. P. C., Courts shall, when the suit is for movable property and if the decree be for the delivery of such property, also state the amount of money to be paid as an alternative if delivery cannot be had. As there is no other provision in the Civil Procedure Code as regards the form of the decree in suits for return of promissory notes, it has to be held that the Legislature intended Or. XX, r. 10 to apply to such cases also, for promissory notes cannot be said to be not movable property within the meaning of the Section.

The measure of damages in an action for conversion of a negotiable instrument would *prima facie* be the face value of the instrument.— **17 T. L. J.,** ***95*****.**

**8.** Suits for recovery of paddy has been consistently treated as those for movable property within the meaning of Section 208 (F. B.).— **44 T. L. R.,** ***76***
**(=18 T. L. J.,** ***185*****).**

**Or. XX, r. 11** [= S. 205 = *Or. XX, r. 11*]

I. The corresponding Section of Regulation II of 1065 was as follows:—"205. In all decrees for the payment of money, the Court may, for any sufficient reason, order that the amount shall be paid by instalments with or without interest, and upon such conditions as it thinks proper.

And after the passing of any decree for payment of money, the Court may, on the application of the judgment-debtor and with the consent of the decree-holder, order that the amount decreed be paid by instalments on such terms as to the payment of interest, the attachment of the property of the defendant, or the taking of security from him, or otherwise, as it thinks fit:

Save as provided in this Section and Section 201, no decree shall be altered at the request of parties."

II. The new Rule provides expressly "for an order postponing the payment of the decretal amount. A temporary postponement is a smaller concession than a scheme of instalments; and in many cases such a discretion might be fitly exercised without waiting, as at present, for a judgment-debtor's arrest under Section 337-A."

*India Gazette dated 21-12-1901, Pt. V.*

[Section 337-A referred to corresponds to Section 327 of Regulation II of 1065 which is adopted as Rule 33 of Order XXI.]

III. The last Para of Section 205 was "inaccurate inasmuch as it takes no account of consensual alterations in revision or appeal," and so it is omitted.—

*India Gazette, Ibid.*

**Case Law.**

It is a well-recognised principle of law that an execution Court cannot go behind the decree or vary its terms. It has to take the decree as it stands and execute it according to its terms. Where there is no provision in a decree for the payment of the decree amount by instalments, the executing Court has no jurisdiction to make such an order.

The expression "Court" in Order XX, Rule 11, means the Court passing the decree. Under Clause (1) of Rule 11, the Court can pass the order *at the time of passing the decree.*

Clause (2) of Rule 11, can come into operation only if there is *the consent of the decree-holder.*

Order XXI, Rule 38, does not empower the Court to suspend the operation of the decree so far as the other remedies of the decree-holder are concerned. Rule 38 is a special provision enabling the executing Court to suspend the operation of the decree in so far as it relates to the arrest and detention of the judgment-debtor. There is nothing in Rule 38 which empowers the executing Court to make an order directing the payment of any decree amount by instalments.

To allow the executing Court to do so would be to allow the executing Court to go behind the decree so as to vary the terms thereof which is not warranted by law. The effect of disallowing the decree-holder's petition for the judgment-debtor's arrest and detention is merely *to postpone* the execution of a warrant for the arrest of the defendant. On the contrary an order for payment in instalments would, in effect, be a negation of the decree-holder's right to realise his amount in execution.—

**19 T. L. J., *814.***

Decree for possession and mesne profits.

12. (1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, and in cases in which value of improvements is claimed but the amount of such value is disputed, the Court may pass a decree—

(a) for the possession of the property;

(b) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or for the value of improvements or directing an inquiry as to such rent or mesne profits, or value of improvements;

(c) directing an inquiry as to rent or mesne profits or the value of improvements from the institution of the suit until—

(i) the delivery of possession to the decree-holder,

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or

(iii) the expiration of three years from the date of the decree,

whichever event first occurs.

(2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.

---

**Or. XX, r. 12** [= Ss. 207, 206 = *Or. XX, r. 12*]

I. 1. *Sub-Rule (1).*—Clause (a) is new, Clause (b) corresponds to Section 207 of the old Regulation and Clause (c) to Section 206 without the Explanation.

2. *Sub-Rule (2).*—This is new.

II. 1. Sections 206 and 207 of the old Regulation were as follow:—"206. *In suits for land, Court may decree payment of mesne profits with interest.*—When the suit is for the recovery of possession of immovable property yielding rent or other profit, the Court may provide in the decree for the payment of rent or mesne profits in respect of such property from the institution of the suit until the delivery of possession to the party in whose favour the decree is made, or until the expiration of three years from the date of the decree (whichever event first occurs), with interest thereupon at such rate as the Court thinks fit.

*Explanation.*—"Mesne profits" of property mean those net profits which the person in wrongful possession of such property

actually received, or might, with ordinary diligence, have received therefrom."

"207. *Court to determine amount of mesne profits prior to suit.*—When the suit is for the recovery of possession of immovable property and for mesne profits which have accrued on the property during a period prior to the institution of the suit, and the amount of such profits is disputed, and in cases in which value of improvements is claimed and the amount of such value is disputed, the Court shall determine the amount or value as the case may be by the decree itself."

[The Explanation to Section 206 has been relegated to "Definitions."—See Section 2 (12) *Supra.*]

**2.** It may be noted that Section 207 of the old Regulation differed from the corresponding Section 212 of the Indian Code of 1882. The latter Section was :—

"212. When the suit is...........and the amount of such profits is disputed, the Court may either determine the amount by the decree itself, or may pass a decree for the property and direct an enquiry into the amount of mesne profits, and dispose of the same on further orders."

In regard to the modification introduced, the Statement of Objects and Reasons for the old Regulation said :—"The discretionary power of postponing till the execution of the decree, the settlement of the amount of mesne profits, &c., claimed in the plaint is sometimes abused to the great detriment of the litigant public. Without a settlement of the amount at the time of the judgment, it is often impossible to make a proper order regarding the costs of litigation. The postponement of the decision upon an important part of the claim often misleads the parties, to say nothing of the loss of evidence which the delay may cause. Moreover, in execution of the decree, the matter does not receive the consideration it deserves. Some Judges are prone to postpone enquiry into the complicated questions of mesne profits and valuation to the execution in order to clear their file of suits, and the consequence is that additional work is thrown on the Judge whose duty it is to execute the decree. For these reasons, it is intended to take away the power of reserving for execution, the decision as to the amount of mesne profits, value of improvements, &c. Section 212, as amended and adopted, requires that all such questions must be tried at the hearing of the suit and decided by the judgment and decree."— *S. O & R., Para 30.*

III. "In Rule 12, power is given to the Court to direct by means of a preliminary decree an enquiry into mesne profits, or value of improvements. This is to enable the Court to decide the matter in controversy other than rent, mesne profits, or value of improvements, and to have that decision, immediately taken to the Appellate Court without holding an elaborate enquiry as to mesne profits or value of improvements which may eventually turn out to be needless. Again, it is thought desirable that, even in cases of mortgagor and mortgagee, where the mortgagee claims and is awarded value of improvements, the mortgagee should not be in a position to claim value of improvements, for a period more than 3 years from date of decree. As the law now stands, where a mortgagee is sought to be ousted in execution of a decree for redemption, he claims and is allowed a fresh valuation of his improvements made or effected subsequent to the decree without any reference to the length of time elapsing after decree, and thus giving rise to the necessity of another enquiry into a matter which ought to be, and is expected to be, settled by the decree itself. This new provision would provide an inducement to a mortgagee surrendering possession, soon after decree, just as the 3 years' rule would induce a decree-holder entitled to possession to recover his property within the 3 years on the penalty of not getting mesne profits or rent for more than that period."

*Notes on Clauses.*

IV. This Rule follows the corresponding Rule in the British Indian Code, with the additional provision for value of improvements. The words "and in cases in which .........disputed" in the main para of Sub-Rule (1): the words "or for the value of improvements" and the words "or value of improvements" in Clause (*b*): the words "or the value of improvements" in Clause (*c*) do not occur in the British Indian Rule.

V. The observations contained in the Notes on Clauses of the India Bill of 1901 to amend the Code of 1882, may be extracted in this connection:—"It is proposed to affirm a decision interpreting a deferred investigation into mesne profits under Section 211 [ = S. 206 of old Regulation ] as a proceeding in the suit and to supersede the provisions of Clauses (*a*) and (*b*) of Section 244 [ =S. 238 of old Regulation ] in so far as they relegate an enquiry directed under Section 212 [ = S. 207 of old Regulation] to the execution department. * * The inquiry will be as much a part of the suit as any other proceeding therein, with this single difference that objections to the principle of the decision must be taken in appeal against the preliminary decree, while pleas capable of being argued in appeal against the final decree will be restricted to matters affecting the amount of mesne profits. The check on undue delay will be sought, not in the law relating to the limitation of the period for applications, but in that regulating the hearing of pending suits; and the plaintiff will be bound to prosecute the inquiry, under stress of the ordinary penalties for default, with the same diligence as though this portion of the case were a separate suit for mesne profits. With a view, however, to the further curtailment of delay and expense, it is suggested that the claim for mesne profits should not continue till actual delivery of possession, if the defendant prefers to relinquish the land with notice to the plaintiff.

The Explanation at present appended to Section 211 has been removed to its proper place among the definitions."

**Case Law.**

**1.** The question of mesne profits may be left for settlement in execution when the suit is for land and profits, but not when the suit is for mesne profits alone in the shape of damages To do otherwise is to reserve for settlement in execution the very question and perhaps the only one on which the parties were at issue, and such a procedure is unwarranted.— **3 T. L. R., *41.***

[Note the new Rule.]

**2.** A and B obtained a decree against C for recovery of certain property with mesne profits. They subsequently sued also D, E and others, the alienees of C. to recover from them mesne profits on the portions of the property held by them during the pendency of the former suit from the date of their alienation.

*Held*.—(1) The claim against C was *res judicata*, inasmuch as a decree had already been obtained against him on the same cause of action for the same relief; but the claim against D, E and others, the alienees *pendente lite* is not open to that objection because they were no parties to the former suit.

(2) A and B have a cause of action for profits against all those who hold possession of their properties since the decree in the former suit did not deal with that claim.— **6 T. L. R., *121.***

**3.** In cases where the holder of a decree dispossesses those who are not parties to his decree but are in possession of the property concerned, the latter are entitled to restoration of the property on proving their possession unless the decree-holder proves, as against them, a better title. A person so dispossessed and suing for restoration of the property cannot claim mesne profits, under these Sections.

The general principles of law are that no man should be deprived of the property in his possession without the authority of a decree of competent Court duly obtained

*against him* ; and that those who seek to disturb present possession must prove their title to do so. When the holder of a decree dispossesses those who are *not parties to his decree* and calls upon them to prove their title, he violates these sound principles. From the provisions of Sections 213 and 214 (of Regulation II of 1037) which allow the person dispossessed to recover possession *free of cost* and the decree-holder to establish his title against the possession *without further charge*, it is clear that the Legislature did not intend to confer an additional privilege upon decree-holders *as against strangers to the decree*. Possession which is said to be nine points of law will cease to be of the great importance which it, in the interests of commonwealth, deservedly enjoys, if A, by obtaining a decree against B, could dispossess C of the property in his possession, and call upon him to prove his title and be allowed to retain possession without proving a better title.

Claim to mesne profits is beyond the scope of the provisions of Sections 213 and 214 which are simply intended to secure possession of immovable property. [Section 213 deals with obstruction to execution of decree by a *bona fide* claimant other than the defendant and the investigation of the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant.

Section 214 refers to cases where a person other than the defendant dispossessed of immovable property, disputes the right of the decree-holder to be put into possession of such property and the investigation of the matter in the same manner and with the like powers as if a suit for the property had been instituted by the applicant against the decree-holder.].— **9 T. L. R.,** ***46.***

**4.** Under the new Procedure Code, Section 207, questions regarding improvements etc., must be determined by the Court which adjudicates on the case and cannot be reserved for settlement in execution.—

**9 T. L. R.,** ***147.***

**5.** Questions as to value of improvements should not be reserved for settlement in execution.— **9 T. L. R.,** ***185.***

**6.** As an exception to the general rule that a plaintiff cannot recover more than what he claims in the plaint, a plaintiff is entitled to recover the ascertained amount of mesne profits, although it may exceed the amount stated in the plaint.

The reason for making an exception in favour of mesne profits is that the person claiming them, being generally out of possession, could hardly give the exact amount of profits due to him and that the party in possession who is to account for profits should not take advantage of his adversary's imperfect knowledge.—

**9 T. L. R. App.,** ***12.***

**7.** It is imperative that the Courts should determine the value of improvements claimed by the decree itself ; and not leave it for settlement in execution.—

**12 T. L. R.,** ***194.***

**8.** A plaintiff whose claim for future mesne profits was neither expressly allowed nor refused in the decree might be allowed to bring a fresh suit for profits from the date of the decree up to the date of satisfaction of the decree.

It is entirely discretionary with the Courts to adjudicate upon the claim to future mesne profits or to leave it to the plaintiff's option to enforce it by a separate suit. This is clear from the express language of Section 206 and especially from the words "may provide" therein. If the Court considers the claim to future profits and either allows it or disallows it, its decision would certainly bar a fresh suit in respect of the same. From the decree or judgment being silent on the point, it may be presumed that the Court declined to allow it unless there are circumstances pointing to the conclusion that there was no adjudication on the matter (F. B.).—

**16 T. L. R.,** ***1.***

Dist.—43 T. L. R., 157
(= 17 T. L. J., 629).

**9.** In the absence of any direction in the decree for the ascertainment and award of the value of improvements in execution, it is not open to a Court executing the decree to go into the question.

Questions relating to the value or amount of improvements should be determined by the decree itself and no separate suit for the same is maintainable.— **17 T. L. R.,** *87.*

Fol.— 28 T. L. R., 129 ( =2 T. L. J., 478).

**10.** A Jenmi obtained a decree for ejectment of his tenants and for 3 years' Michavarom from the date of the decree. He did not get possession of the lands for some time. The present suit was for recovery of mesne profits that accrued subsequent to the 3 years fixed in the prior decree.

*Held.*—The plaintiff's suit for the subsequent mesne profits was not *res judicata* and was maintainable.— **17 T. L. R.,** *115.*

Fol.—33 T. L. R., 281 (=7 T. L. J., 326).

**11.** Plaintiff, on 8-5-1069, brought a suit for redemption and for arrears of Michavarom, future Michavarom and costs, and valued the claim for the Michavarom of 1067 and 1068 and for the Chingom crop of 1069. The Munsiff allowed redemption and the Michavarom for 1067 and 1068, but dismissed the rest of the claim. Plaintiff obtained possession of the property in execution of the decree in 1074, but the Michavarom from 1069 was withheld. The present suit was for recovery of Michvarom from 1069 to 1074. Defendant contended that the suit was barred by *res judicata* inasmuch as the plaintiff had, in the previous suit, claimed the future mesne profits and had been disallowed the same.

*Held.*—Section 207 is imperative as regards mesne profits which have accrued due prior to the institution of the suit. Section 206 is an enabling Section, and there is no bar to a fresh suit for future mesne profits in those cases in which the Court has not exercised the discretion vested in it.

Under Section 207, the expression "the rest of the claim is dismissed" referred not to mesne profits after suit, but to mesne profits claimed for the period before suit in excess of the period, for which the Court considered the plaintiff entitled to claim mesne profits.— **1 S. D.,** *90.*

**12.** The final order contemplated by Section 206 is the decree of the Appellate Court in cases where appeals are preferred.

The three years laid down in the Section is to be calculated from the date of the final order of the High Court where an appeal was preferred from the original decree.— **1 S. D.,** *196.*

**13.** Where, in execution of a decree, it was found that the decree fixed no time for which mesne profits were recoverable in execution:

*Held.*—The period for which the profits could be allowed by the Court is three years.— **4 S. D.,** *227.*

**14.** In a suit for partition and other reliefs, the decree awarded past and future mesne profits but refused interest which decree was confirmed by the Appellate Court. In execution, the Court awarded interest to plaintiff and the order became final as no appeal was presented against it. The plaintiff having realised the mesne profits and interest, the 1st defendant applied for refund of these two sums alleging that they were illegally recovered from him. Whereupon the Court disallowed his prayer.

*Held* (on appeal).—As the 1st defendant did not appeal against the order awarding interest to plaintiff he was bound by that order. Orders in execution proceedings not appealed from, are binding on the parties thereto in all subsequent proceedings on principles analogous to those of *res judicata.*

Under Section 206, even where a decree is silent about interest, it cannot be awarded in execution.— K. P., *281*.

**15.** A decree for partition passed by the Zillah Judge in a suit by the plaintiff, a member of a Hindu family, provided, *inter alia*, for "future mesne profits." The decree was confirmed by the High Court on the 26th Makarom 1074. The report of the commissioners deputed to divide the properties was accepted and a decree in pursuance thereof passed on the 31st Adi 1081. On the plaintiff applying for execution of the decree relating to mesne profits :

*Held.*—(1) The date of decree for purposes of Section 206, C. P. C., should be taken to be that of the final decree, *viz.*, 31st Adi 1081.

(2) "Future mesne profits" meant mesne profits up to date of possession. Section 206, C. P. C., having no application to decrees in suits for partition by members of a Hindu family, inasmuch as the plaintiff has no specific interest in properties until he obtains a decree for partition.

*Per Hunt, J.*—The only question is whether future mesne profits means from the date of the plaint or from date of decree. In the absence of any direction to the contrary, the Courts must be deemed to have awarded future mesne profits from the date of plaint ; and 21 All., 361 lays down a practical rule for guidance where there is any ambiguity in the terms of the decree sought to be executed ; for it holds that the Court executing the decree must in such a case construe it in accordance with law.—

1 T. L. J., *249*.

Dist.—33 T. L. R., 258
(=7 T. L. J., 245).
33 T. L. R., 281
(=7 T. L. J., 326).
Fol.—2 T. L. J., 291.
Ref.—11 T. L. J., 24.
Not Fol.—18 T. L. J., 515.

**16.** A decree provided for payment of mesne profits at a particular rate without specifying from and up to what date they were payable. The plaint claimed mesne profits from 1073 and the appellate decree in the case was dated 13-11-78.

*Held.*—(1) The decree, being in its terms ambiguous, it is competent to the Court executing it to refer to the pleadings in the suit in which such decree was passed, to ascertain its precise meaning. So construed, mesne profits were payable from the date claimed in the plaint.

(2) Under Section 206, C. P. C., the decree-holder was entitled to get mesne profits only for three years from the date of the final or appellate decree.—

1 T. L. J., *375*.

**17.** The decree of the Court awarded to the plaintiff "future mesne profits," without mentioning whether such mesne profits should be calculated from the date of the institution of the suit, or from the date of the decree.

*Held.*—The expression "future mesne profits" should, in the absence of any direction to the contrary, be construed to mean mesne profits from the date of the plaint, and not from the date of the decree, and this view was supported by the language of Section 206, C. P. C.—

2 T. L. J., *291*.

**18.** A mortgagee, defendant, is entitled to claim compensation for improvements effected between the date of the decree and the time of actual eviction or redemption even though the value of improvements made before decree has been settled by the decree itself. Such claim must be determined in execution as the question may be said to come within the provisions of Section 238 of the Civil Procedure Code [new Section 40], and not by a separate suit.

Improvements made before decree and whose value has been fixed by the decree are not liable to be re-valued on date of delivery of property on the ground that they have increased in value owing to the labour spent upon them by the mortgagee ;

and this view does not militate against the rule which allows the mortgagor to claim a reduction in the value of improvements adjudged by the decree if the loss is due to misfeasance of the mortgagee, as the basis of the mortgagor's right is entirely a different one.

*Per Ramachandra Row, J.*—As regards improvements made after decree, it appears that it is unjust to deny the defendant's right to compensation for the same. To say that the defendant ought not to have made improvements after decree is unreasonable. The defendant's possession after decree is not that of a trespasser. He has a substantial interest in the property. He continues to be interested in its efficient condition till he is redeemed. Whether after the decree for redemption the relationship between the plaintiff and the defendant is that of the mortgagor and mortgagee or not, it is clear that the defendant acts lawfully in making improvements, and is entitled to their value on the principle of Section 70 of the Contract Act. The right to claim compensation for such improvements must be determined in execution. Section 238 [new Section 40] of the Civil Procedure Code must be liberally construed so as to include within its scope such a claim.

*Per Muttunayagom Pillai, J.*—The right of the mortgagee to claim the value of improvements, if any, effected by him after suit was not meant to be curtailed by Section 207 of the Civil Procedure Code. As the relation of mortgagor and mortgagee subsists between the parties even after the decree is passed, the right to make improvements continues even after decree; and if that be so, it is plain on ordinary principles of justice that the increase should not go into the pocket of the mortgagor without his paying the sum of money which caused the increase, merely because it happened to be made after the passing of the decree. Such improvements could be claimed by him in execution, Section 238 of the Civil Procedure Code being wide enough to enable the execution Court to entertain and dispose of the claim.

*Per Viraraghava Iyengar, J.*—Section 207 of the Civil Procedure Code could not be interpreted as impliedly debarring the mortgagee from making improvements subsequent to the date of the decree and the question as to the value of such further improvement could be gone into in execution (F. B.).— **28 T. L. R.**, *129* (=**2 T. L. J.**, *478*).

Fol.—30 T. L. R., 245.
Ex.—8 T. L. J., 299.

[Note the change in the new Rule.]

**19.** Certain properties were outstanding on lease in favour of the defendants, who had besides the option of purchasing them for a certain specified sum before the expiry of the period of the lease. The defendants did not avail themselves of the option of purchasing the properties. The lease expired on 14-2-77 and after the expiry of the lease the lessors (the owners of the properties) sold the properties to the plaintiff. Plaintiff brought a suit (on 27-7-77) for the arrears of rent up to 14-2-77 and also for rent, mesne profits, or damages for wrongful occupation up to 14-7-77. Plaintiff did not in that suit claim recovery of possession as his allegation was that he had taken peaceable possession nine days before the date of suit. Plaintiff got a decree as prayed for. Plaintiff next brought a suit on 16-8-'79, for possession and mesne profits from 6-9-'77, on the allegation that, though plaintiff took peaceable possession on 18-7-'77, defendants trespassed on the properties on 6-9-'77. The defendants reiterated the contention they had raised in the previous suit, *viz.*, that plaintiff never got possession and that they (defendants) were all along in possession and that the claim for recovery was barred under Section 39 C. P. C. It was held in appeal by the High Court that plaintiff's claim to recover possession was barred under Section 39, but that his title

subsisted so as to support a further suit for mesne profits. Plaintiff was awarded the amount claimed as damages for wrongful detention. The present suit was brought in 1088 for mesne profits from 1079. The plaintiff alleged that the decree of the High Court in his second suit (A. S. 265 of 1082) created as it were a rent charge on the the property. The defendants contended that the suit was not maintainable. The lower Court awarded mesne profits for three years and held the rest of the claim was barred. Both parties appealed.

*Held.*—The decree of the High Court in A. S. 265 of 1082 did not create a rent charge as claimed by plaintiff, and the observation in the judgment as to the possible preservation of the plaintiff's title by successive decrees for mesne profits and peaceable re-entry was opposed to any such construction being put on the decree.

An owner who had lost his judicial remedy to recover possession by means of suit and whose *jus possidendis* had been reduced to a bare chance of peaceable re-entry could not recover profits from the person in possession, on the footing that such possession was wrongful.— **6 T. L. J.**, *255*.

**20.** 'Mesne profits' does not as a matter of law include also 'interest on mesne profits'. The decree-holder, therefore, is not entitled as a matter of law to get interest on mesne profits where the decree sought to be executed does not provide for such interest.— **7 T. L. J.**, *8*.

[See definition of 'mesne profits'—Section 2 (12).]

**21.** A decree for partition directed delivery of possession of a specific share of immovable property with mesne profits till the date of recovery of possession. Owing to the obstructions created by the judgment-debtor, the decree-holder was put in possession only about five years after the passing of the final decree. The execution Court awarded mesne profits till the date of recovery of possession. In appeal it was contended for the appellant that only three years' mesne profits could be awarded, and the respondent contended that the period during which the execution of the decree was stayed on the application of the judgment-debtor should be excluded on the analogy of the provisions of Sections 15 and 16 of the Limitation Regulation (old).

*Held.*—(1) Under Section 206, only three years' mesne profits could be awarded. Even if the decree allowed mesne profits till the date of delivery of possession, it must be taken to be subject to the implied period of limitation mentioned in that Section.

(2) The provisions of Sections 15 and 16 of the Limitation Regulation did not qualify those of Section 206 of the Civil Procedure Code.— **33 T. L. R.**, *258*
(= **7 T. L. J.**, *245*).

Fol.—18 T. L. J., 81.
18 T. L. J., 515.

**22.** In a prior suit between the parties, the High Court decreed to the plaintiff one-half of the plaint properties therein with mesne profits ; but the High Court did not say up to which date mesne profits should be awarded. This was in 1080. The execution Court awarded mesne profits for three years from the date of the High Court decree, and plaintiff recovered it. The present suit was brought for mesne profits for three years after the above period, because delivery of possession of the property was given to the plaintiff only after 6 years after the date of the High Court decree.

The defendant contended, *inter alia*, that the suit was not maintainable, as this question related to the execution of the prior decree, which under Section 238 of the C. P. C. [new Section 40], should be decided in execution, and not by a separate suit.

*Held.*—(1) A decree which prescribed no specific period (for which mesne profits

were awarded) was governed by Section 206 of the C. P. C., and under it no more than three years' mesne profits from the date of the decree was awardable at the highest.

(2) Where under the decree in the prior suit no more than three years' future mesne profits was intended to be dealt with, a separate suit for mesne profits for the period beyond the three years covered by the decree was maintainable.—

**33 T. L. R.**, *281*
(= **7 T. L. J.**, *326*).

Ref.—38 T. L. R., 39
( = 12 T. L. J., 72).
Dist.—43 T. L. R., 157
( = 17 T. L. J., 629).

**23.** The claim for mesne profits is virtually a claim for damages. 'Mesne profits are in the nature of damages which the Court may mould according to the justice of the case.' There is no abstract principle independent of the particular facts which determines the assessment of mesne profits in every case. The facts have first to be ascertained: and then the determining principle will be: what was the character of the possession of the plaintiff before he was ousted? and what has the owner lost?

Where the defendant originally came into possession under a good and valid title and it is his continuance in possession after his holding was sold in execution that has made him a wrong doer, the character of the possession before trespass by the defendant should be ascertained to arrive at the true measure of damages, because such possession is a fair index of intention as to the mode of occupation if there was no trespass.

Where the owner is a person who does not cultivate the land himself, the assessment of mesne profits should be made on the basis of a fair and reasonable rent.

The definition of "mesne profits" given in Section 206 does not include interest, and, in this respect, it differs from the provision in the British Indian Civil Procedure Code.

There is no rule of law obliging the Court to allow interest on mesne profits: and it is a matter for the discretion of the Court, upon consideration of the facts, whether to allow interest or not.—

**38 T. L. R.**, *39*
( = **12 T. L. J.**, *72*).

The old definition has been superseded by the new.—See Section 2 (12).]

**24.** If the claim for possession fails, the claim for mesne profits must also fail along with it.— **15 T. L. J.**, *202*.

**25.** Section 206 places an absolute time-limit on the period for which mesne profits may be recovered, and it is not therefore permissible to read into it the provisions of Section 15 of the Limitation Regulation. Section 206 is not controlled by Section 15 of the Limitation Regulation.

Under the general rule, all amounts similar to Michavarom and Chumadu could be taken into account on redemption, and no special limit applies to the claim for such dues apart from that which would apply to the mortgage itself.

The fact that the decree-holder got delivery of possession only after the three years stipulated in the decree cannot enlarge his rights in that respect.

The decree has, in the generality of cases, a right of fresh suit for the mesne profits which are refused to him in execution.—

**42 T. L. R.**, *344*
(=**18 T. L. J.**, *81*).

**26.** It is settled by a series of decisions that a unilateral expression by one co-parcener of intention to terminate jointness is enough to create the status of division and that consequently the filing of a suit for partition is enough to make the plaintiffs from that moment a divided member of the family. A suit for partition, therefore, is a suit for specific property, and Section 206, C. P. C., applies to partition decrees also and more than three years' mesne profits cannot be realised in execution by the decree-holder.

The observation contained in 1 T. L. J., 249 about the inapplicability of Section 206 to partition suits was *obiter*, as the question did not arise at all on the facts of that case and the real dispute in that case was about the interpretation of the words "future mesne profits" used in the decree.—

**18 T. L. J.,** *515.*

**27.** A hypothecatee from the mortgagee cannot have greater rights against the mortgagor than the mortgagee himself has. The hypothecatee's right is subject to all the liabilities of the mortgagee to the mortgagor. His security attaches only to the mortgage amount that might be left after settlement of all accounts between the mortgagor and the mortgagee. Those accounts have to be taken in a suit for redemption, up to the date on which the property is actually redeemed, *i.e.*, passes back into the possession of the mortgagor. The mesne profits due to the mortgagor on account of the delay in delivering the mortgaged property to him after the deposit of the mortgage amount is one item in the account. The amount payable to the mortgagee has to be determined on striking a final balance in the account between him and the mortgagor. That necessarily means that the mesne profits due to the latter have to be set off *pro tanto* against the mortgage amount and the value of improvements, if any, payable to the mortgagee.—

**19 T. L. J.,** *297.*

**28.** The second defendant leased the plaint property to the plaintiff directing him to recover possession from the first defendant a prior lessee. The plaintiff accordingly brought the suit to recover possession of the property with mesne profits. During the pendency of the suit in the Munsiff's Court, the first defendant put in a petition before the Court, whereby he surrendered the property and disclaimed liability for rent from that date.

*Held.*—In the circumstances disclosed, the obstinate refusal of the plaintiff to take possession of the property vacated by the first defendant till after the decree could not be left out of account. The plaintiff's claim for mesne profits after the date of the surrender of the property by the first defendant had to be disallowed. Mesne profits were in the nature of damages, and each case had to be dealt with on its merits.

**19 T. L. J.,** *830.*

**29.** Some of the Adhikaris of a Devaswom sued the defendants for an injunction restraining them from performing certain services in the temple on the ground that they had been removed from the offices by the management of the Devaswom. This prayer was allowed by the trial Court as regards the second defendant. On appeal, the decision was reversed and the suit dismissed with costs as against him also. The second defendant then applied to the lower Court in execution for recovery of his costs and in addition a sum towards damages. The lower Court allowed the claim only to a smaller amount. The second defendant filed an appeal as regards the balance disallowed, and the Devaswom as regards the amount awarded.

*Held.*—The claim for damages could not be said to be one for mesne profits, as it did not relate to profits which the person in wrongful possession of property actually received or might with ordinary deligence have received therefrom.—

**45 T. L. R.,** *254.*

13. (1) Where a suit is for an account of any property and for its due administration under the decree of the Court, the Court shall, before passing the final decree, pass a preliminary decree ordering such accounts and inquiries to be taken and made, and giving such other directions as it thinks fit.

Decree in administration suit.

(2) In the administration by the Court of the property of any deceased person, if such property prove to be insufficient for the payment in full of his debts and liabilities, the same Rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being with respect to the estates of persons adjudged or declared insolvent; and all persons, who in any such case would be entitled to be paid out of such property, may come in under the preliminary decree, and make such claims against the same as they may respectively be entitled to by virtue of this Code.

---

**Or. XX, r. 13** [ = „ = *Or. XX, r. 13*]

I. This Rule was not in the original Bill, but was inserted by the Select Committee.

II. The provision existed in the Indian Code of 1882—Section 213. It was not adopted in Regulation II of 1065, and the Statement of Objects and Reasons said :—"31. As administration suits are unknown in this country, and under the systems of law here administered, there is hardly any necessity for an administration suit, the retention of Section 213 seems quite unnecessary. It is accordingly omitted."

III. This Rule reproduces the corresponding Rule in the British Indian Code with the difference that the words—"within the local limits of the Courts in which the administration-suit is pending"—which occur in that Rule after the words "for the time being", have been omitted. It may be noted that, in British India, there is the Presidency-Towns Insolvency Act as to Presidency Towns, and the Provincial Insolvency Act as to the rest of British India.

IV. The British Indian Rule is almost the same as Section 10 of the Judicature Act of 1875.

V. As to the debts and liabilities provable and the rights of secured creditors, under the Insolvency Regulation, VIII of 1090, see Sections 29-31 thereof.

VI. 1. As to Forms of plaint in an administration suit, see Appendix A, Forms Nos. 41-43.

2. As to Forms of preliminary decree in an administration suit, directing accounts to be taken and enquiries to be made, see Appendix D, Forms Nos. 9 and 11.

As to Forms of final decree, see Appendix D, Forms Nos. 10 and 12.

**Case Law.**

The law in Travancore allows a suit for an account of the property of an intestate and for its due administration under decree.

14. (1) Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase-money has not been paid into Court, the decree shall—

Decree in pre-emption suit.

(a) specify a day on or before which the purchase-money shall be so paid, and

(b) direct that on payment into Court of such purchase-money, together with the costs (if any) decreed against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs.

(2) Where the Court has adjudicated upon rival claims to pre-emption, the decree shall direct,—

(a) if and in so far as the claims decreed are equal in degree, that the claim of each pre-emptor complying with the provisions of Sub-rule (1) shall take effect in respect of a proportionate share of the property including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provisions would, but for such default, have taken effect; and,

(b) if and in so far as the claims decreed are different in degree, that the claim of the inferior pre-emptor shall not take effect unless and until the superior pre-emptor has failed to comply with the said provisions.

---

The persons to be sued are, in the present state of the law, the heirs or next of kin, and the only one who would have occasion to sue them are the creditors of the intestate.

An administration suit does not necessarily imply the existence of an administrator to whom letters of administration have been granted. The grant of letters of administration is not a *sine qua non* of such a suit. The word "administration" is used not in the narrow sense but generally to denote the dealing with a property with a view

**15.** Where a suit is for the dissolution of a partnership, or the taking of partnership accounts, the Court, before passing a final decree, may pass a preliminary decree declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit.

Decree in suit for dissolution of partnership.

---

properly to utilise it for the purposes which under the law it has to serve. The essential conditions for administration appear to be the existence of property that is liable to be utilised for a particular purpose, a person in whom the property is vested and who fails or is unable to use it for the purpose and a person who is interested in that purpose. The wording of Order XX, r. 13 of the Code itself lends support to this view. It refers in terms not to a suit against an administrator, but to a suit for an account of any property and for its due administration. The wording is wide enough to embrace all cases where there is a person who is entitled to call for an account of the property.

Order XX, Rule 13, and Form 41, Appendix A, are concerned naturally with the procedure in such a suit, how it should be started, tried and decided. They do not enumerate the cases in which such a suit will lie or the persons by whom or against whom such a suit can be brought (F. B.).—**44 T. L. R.,** *320* (= **19 T. L. J.,** *15*).

---

**Or. XX, r. 14** (1) [= S. 208 =*Or. XX, r. 14* (*1*)]
„ „ **r. 14** (2) [= „ = *Or. XX, r. 14* (*2*)]

I. The Section of Regulation II of 1065 corresponding to Sub-Rule (1) was as follows:—

"208. *Suit to enforce right of pre-emption.*—When the suit is to enforce a right of pre-emption in respect of a particular sale of property, and the Court finds for the plaintiff, if the amount of purchase-money has not been piad into Court, the decree shall specify a day on or before which it shall be so paid, and shall declare that on payment of such purchase-money together with the costs (if any) decreed against him, the plaintiff shall obtain possession of the property, but that if such money and costs are not so paid, the suit shall stand dismissed with costs."

II. *Sub-Rule* (*1*).—This reproduces the British Indian Rule. In regard to the change made by the addition of the words "whose title thereto......of such payment," the Indian Special Committee said:—Having regard to the opinion expressed in I. L. R., 24 Mad., at page 463, we have thought it right to make it clear that title vests without an instrument of transfer. To require a transfer now might throw a cloud over numberless titles which rest on the assumption sanctioned by long practice that no instrument of transfer was necessary."

The title to the property vests in the plaintiff on payment of the purchase-money.

III. *Sub-Rule* (*2*).—This is new and is the same as the corresponding British Indian Rule which is "based on the rulings contained in the decisions of the High Court of Allahabad at I. L. R., 6 All., 370, 455, and I. L. R., 11 All., 164." It prescribes the form of decree to be passed when these are rival pre-emptors.

---

**Or. XX, r. 15** [= S. 209 = *Or. XX, r. 15*]

I. The corresponding Section of the old Regulation ran as follows:—

"209. *Suit for dissolution of partnership.* When the suit is for the dissolution of a

partnership, the Court, before making its decree, may pass an order fixing the day on which the partnership shall stand dissolved, and directing such accounts to be taken and other acts to be done as it thinks fit."

II. For Forms of preliminary and final decrees, see Appendix D, Forms Nos. 13 and 14 respectively.

### Case Law.

1. The suit was by a partner for recovery of money due on settlement of accounts. The lower Courts concurrently found that there was no settlement of accounts, and dismissed the suit. On special appeal, the High Court while ordering the amendment of plaint for recovery of money into one for accounts and remanding the case under Section 583, C. P. C., [= Or. XL, r. 22]:

*Held.*—(1) A suit for recovery of money due under a settlement of accounts might be amended into a suit for accounts as the relief arose out of and was immediately connected with the same transaction and such an amendment did not alter the character of the suit.

(2) Even after the dissolution of a partnership, the rights and liabilities of a partner as such continued in all things necessary for its winding up; and partners being agents of each other, each could call upon the other for an account at the dissolution of the partnership, provided that each had managed the affairs of the firm.

All partners must render proper accounts of their dealings. Of course if accounts have been accepted expressly or impliedly up to a certain date, accounts need not be rendered up to that date. The party rendering accounts must explain and support them if called upon to do so. The preliminary decree in such cases should be simply "an order on the defendant to file his accounts". Then the Court should fix days for hearing objections, taking evidence on disputed entries, &c. If this will be unduly encroaching on the time of the Court, a commissioner should be appointed to look into the accounts, take evidence about the disputed entries, and submit his report. A receiver should be appointed to collect outstandings, but in this case the outstandings must either have been collected by 1st defendant or already barred. If either partner has been guilty of negligence and this caused loss to the firm, he should be debited with that amount. If defendant refuses to produce accounts and explain or support them when he is bound legally to do so, presumption should be made against him.— **24 T. L. R.,** *95.*

Ref.—39 T. L. R., 135
(=13 T. L. J., 46),
14 T. L. J., 543.

2. Under a decree in a suit for settlement of accounts, any partner to whom money may be due from his co-partners is entitled to have the same realised in execution, whatever be the position he occupies in the suit.

It is usual to allow interest on advances made by the partners in a firm when settling the accounts of the partnership.— **1 S. D.,** *64.*

3. A suit for accounts on dissolution of a partnership is no exception to the rule that a plaintiff in a suit must prove his own case. The non-production by a party of material records in his possession may no doubt give rise to a presumption against him, but the weight due to such a presumption will depend on the facts of each individual case. It is the duty of each of the partners in a partnership to attend diligently to the partnership affairs, and one partner cannot plead in excuse of his own negligence in this particular the neglect o[f] another partner. The facts that a defe[nd]ant partner has been negligent in not [keep]ing detailed accounts of the partn[ership] and that he is also at fault in not pr[oducing] the partnership accounts would n[ot] the plaintiff to succeed if he [...]

negligent and as much at fault as the defendant. The right to call for accounts on dissolution is mutual and each partner is entitled to an account from his co-partners unless he has waived it.

*Per Sankara Pillai, J.*—The proper procedure to be followed in dealing with a suit for dissolution of partnership and rendition of accounts is to pass a preliminary decree dissolving the partnership as from a specified day, and to direct an enquiry into the accounts as provided in Section 209 of the C. P. C. The preliminary decree should also contain a specification of the shares of the parties in the profits and losses of the concern.

*Per Varghese, J.*—When the issue is so simple and so clearly raised and met by evidence so as to be ready for decision at the original hearing, the Court may proceed to pass the final decree without having recourse to a preliminary decree; but that is the exception; the general rule is the other way. In ordinary cases the regular course is to pass an order dissolving the partnership and directing the accounts to be taken; a premature attempt to make a final decision may prejudice the parties.

The test whether a person is a partner or not is whether the business is carried on by him or another as his agent; the question is really one of agency and authority. Each partner is liable to account for his act to his co-partner. The preliminary decree is usually framed to satisfy this condition. The simplest form of the preliminary decree in a partnership suit as given by Lindley is:—"Let an account be taken of all partnership dealings and transactions between the plaintiff and the defendant as co-partners from the.........day of.........And t what upon taking the said accounts shall certified to be due from either of the arties to the other of them, be within nth of the Master's certificate paid arty from whom to the party to same shall be certified to be due. pply."

In taking the accounts the amount due from one partner to another is ascertained; the balance may be in favour of the plaintiff or in favour of the defendant. The right to call for an account, upon the dissolution of a firm, is mutual, and each partner is entitled to an account from his co-partners of their partnership dealings and transactions unless he has legally waived or parted with such a right. The final decree will direct the plaintiff or the defendant as the case may be to refund the excess in his possession.

After passing the preliminary decree, accounts have to be taken. The method of taking partnership accounts is, as given by Lindley, :—

"1. Ascertain how the firm stands as regards non-partners.

"2. Ascertain what each partner is entitled to charge in account with his co-partners; remembering in the words of Lord Hardwicke, that 'each is entitled to be allowed as against the other everything he has advanced, or brought in as a partnership transaction, and to charge the other in the account with what that other has not brought in, or has taken out more than he ought.'

"3. Apportion between the partners all profits to be divided or losses to be made good; and ascertain what, if anything, each partner must pay to the others, in order that all cross claims may be settled."

The proper and convenient mode of doing this is to "fix a day before which each of the partners should file a written statement of his accounts exhibiting therein all the items of receipt for which he is accountable on one side and all items of disbursements on the other; and to fix another day before which the opposite party should file objections which he may have to make to these accounts; and finally the Court ought to appoint a third day upon which an enquiry into the truth and correctness of the statements of accounts filed

**16.** In a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit.

Decree in suit for account between principal and agent.

---

by each party should be made; and on that enquiry the Court will take all such evidence in the way of books and vouchers and so on; each party is entitled to produce as evidence the testimony of necessary witnesses and also all evidence tending to invalidate the accounts or to surcharge them; and eventually the Court should satisfy itself as to the amount which is due as established by the evidence of both the parties and frame its final decree accordingly. The Court should give no decree other than an order for filing the accounts and then confine the decree to such amounts as may be found due upon the proper taking of the accounts. If any party prove contumacious with regard to filing his accounts, the Court may proceed with the taking of accounts against him on the footing of evidence furnished, and in so doing the Court may make all reasonable presumptions against him." The plaintiff cannot get a decree against the defendants on the mere ground that the defendants failed to produce the accounts. "The plaintiff has to prove his own case, and though the defendants may have been equally negligent in not keeping detailed accounts and may possibly be to blame for not producing books, the plaintiff has been at least equally negligent in not keeping up any correct detail of the various works undertaken and of the profits realised therein." Where the books are lost, it is for the Court to give special directions as to the mode in which the accounts should be taken and vouched. It is impossible to find the proper amount due from one to another unless this course is adopted.— **13 T. L. J.,** ***177.***

**4.** See also—

Sec. 116. — **2 T. L. J.,** ***163.***

Or. I, r. 1.—**11 T. L. R.,** ***43.***

---

**Or. XX, r. 16** [ = S. 210 = *Or. XX, r. 16* ]

I. The corresponding Section of Regulation II of 1065 ran thus :—

"210. *Suit for account between principal and agent.*—When a suit is for an account of pecuniary transactions between a principal and agent, and in all other suits not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before making its decree, pass an order directing such account to be taken as it thinks fit."

II. The word 'final' has been inserted "because the preliminary order directing accounts to be taken will itself be appealable as a 'decree' and is referred to as a 'preliminary decree'."—*India Gazette dated 21-12-1901, Pt. V.*

**Case Law.**

**1.** (1) It was the defendant's duty as plaintiff's agent to keep regular accounts of all his transactions on behalf of his principal, not only of his payments and disbursements, but also of his receipts. He does not discharge his duty by merely delivering to his employer a set of written accounts without producing the vouchers by which the items of disbursements are supported. If by the neglect of such duty the principal

Special directions as to account.

17. The Court may either by the decree directing an account to be taken or by any subsequent order give special directions with regard to the mode in which the account is to be taken or vouched and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as *prima facie* evidence of the truth of the matters therein contained with liberty to the parties interested to take such objection thereto as they may be advised.

Decree in suit for partition of property or separate possession of a share therein.

18. Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,—

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Division Peishkar, or any Gazetted subordinate of the Division Peishkar, deputed by him in this behalf, in accordance with such declaration and with the provisions of Section 46;

(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required.

---

suffers loss, that loss must be ultimately borne by the agent.

(2) Where the objections to the accounts are too numerous to be conveniently taken up by the Court in the first instance, the provisions of Sections 379 and 380 of the Civil Procedure Code [=Or. XXVI, rr. 11 & 12] may be had recourse to, before the Court proceeds to take evidence (F. B.).—13 T. L. R., *164*.

2. See also—

Or. I, r. 1.—11 T. L. R., *48*.

Or. XX, r. 17 [= „ = *Or. XX, r. 17*]

Or. XX, r. 18 [= „ = *Or. XX, r. 18*]

It was the provision that was made in the 1901 Bill to amend the Indian Code of 1882, that has been adopted, with some changes, as Rule 18 of the present Indian Code. In regard to the provision in the 1901 Bill, the Notes on Clauses said:—"The Code, by a curious oversight, contains no provision definitely prescribing the form of a decree for the partition of an estate or the separation of a share, although a somewhat special

Decree when set-off is allowed.

**19.** (1) Where the defendant has been allowed a set-off against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

Appeal from decree relating to set-off.

(2) Any decree passed in a suit in which a set-off is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off had been claimed.

(3) The provisions of this Rule shall apply whether the set-off is admissible under Rule 6 of Order VIII or otherwise.

Certified copies of judgment and decree to be furnished.

**20.** Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense.

---

procedure has been rendered applicable in such cases. Section 265 [see Section 46 *Supra*], for example, relegates the actual partition or separation of revenue-paying estates entirely to the execution department and entrusts it to the Collector. On the other hand, Section 396 [see Order XXVI, Rules 13 and 14 *Infra*] contemplates in the case of other immovable property, a preliminary order ascertaining the rights of parties, which is in itself a decree but involves a final decree upon the report of the Commissioner. These Sections, it is proposed in some measure to modify, and it is further intended, by an amendment of Section 540 [Cf. Section 77 *Supra*], to compel the parties to exhaust their objections to the adjudication of principle by appealing against the preliminary decree before the Court proceeds to the further inquiry leading up to the final decree. The Clause has been framed with a view to facilitating this procedure."—*India Gazette dated 21-12-1901, Pt. V.*

Or. XX, r. 19 [ =S. 211 = *Or. XX, r. 19* ]

Sub-Rules (1) and (3) are the same as the first and third Paras of Section 211 of the old Regulation.

The Second Para of Section 211 was as follows :—

"*Effect of decree as to sum awarded to defendant.*—The decree of the Court with respect to any sum awarded to the defendant shall have the same effect, and be subject to the same Rules in respect of appeal or otherwise, as if such sum had been claimed by the defendant in a separate suit against the plaintiff."

II. The Indian Special Committee said:—"The Committee have introduced an amendment to give effect to the view that appeals from decrees relating to set-off should lie to the Courts to which appeals in respect of the original claim would lie."

Or. XX, r. 20 [ = S. 212 = *Or. XX, r. 20*]

## ORDER XXI.

### Execution of Decrees and Orders.

*Payment under Decree.*

Modes of paying money under decree.

1. (1) All money payable under a decree shall be paid as follows, namely :—

(a) into the Court whose duty it is to execute the decree ; or

(b) out of Court to the decree-holder ; or

(c) otherwise as the Court which made the decree directs.

(2) Where any payment is made under clause (a) of Sub-rule (1), notice of such payment shall be given to the decree-holder.

---

**Or. XXI, r. 1** (1) [ = S. 253 =*Or. XXI, r. 1* (1) ]
„ **r. 1** (2) [ =„= *XXI, r. 1* (2) ]

**Case Law.**

**1.** Plaintiff had a decree passed against him at suit of the defendant which he settled by payment out of Court. The defendant afterwards proceeded to execute the decree, had certain property of plaintiff sold in auction and became the purchaser thereof. In a suit by the plaintiff to set aside the sale :

*Held,*—The plaintiff could not sue to have the proceedings rescinded and the sale annulled ; his remedy being in the nature of a suit to recover damages occasioned by the fraud of the execution-creditor.— **1 T. L. R.,** ***65.***

**2.** In a suit to set aside execution proceedings on the ground that the decree has been satisfied, the objection that, under Section 190, old C. P. C., the question of satisfaction of the decree out of Court, could not be entertained and determined, was raised:

*Held.*—Section 190 of the old Civil Procedure Code had no application to regular suits to declare execution proceedings null and void on account of fraud, but that it prohibited only inquiry into adjustment of the decree out of Court in the execution proceedings.

[Section 190 of Regulation II of 1037 was as follows :—

" All monies payable under a decree shall be paid into the Court whose duty it is to execute the decree, unless such Court or the Court which passed the decree shall otherwise direct. No adjustment of a decree in part or in whole shall be recognized by the Court unless such adjustment be made through the Court or be certified to the Court by the person in whose favour the decree has been made or to whom it has been transferred].— **9 T. L. R.,** ***68.***

**3.** Under Section 190 of the old Civil Procedure Code,. no adjustment of a decree in part or in whole, shall be recognized by a Court, unless such adjustment was made through the Court, or be certified to the Court by the person in whose favour the decree has been made or to whom it has been transferred.— **11 T. L. R.,** ***141.***

**4.** It was provided by a decree that the defendant should by the 15th Medom 1085 pay to the plaintiffs a certain sum of money

Payment out of Court to decree-holder.

2. (1) Where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree and the Court shall record the same accordingly.

(2) The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognised by any Court executing the decree.

---

and obtain a release deed for the suit property, and on failure to make the payment as provided for, the plaintiffs were to realise by proceedings in execution, certain sums specified in the decree to be due by the defendant on account of rents, &c. The Court was closed for the summer recess before 15th Medom and reopened on 3rd Edavam, 1085. The defendant did not pay the money to plaintiffs, but paid it into Court on the day the Court re-opened. The Munsiff held that the tender made was out of time and that plaintiffs were not bound to accept payment.

*Held.*—It was not incumbent on the defendant to have made the payment on 15th Medom, 1085, out of Court directly to the decree-holder. He had the option of paying the money into Court under Section 253 of the Civil Procedure Code, and as 15th Medom was a Court holiday, the payment made on the day when the Court re-opened was payment in compliance with the decree.— **27 T. L. R.,** *217* (=**2 T. L. J.,** *377*).

Fol. —3 T. L. J., 348.

5. Held by majority that Section 362 of the Civil Procedure Code [ = Or. XXIV, r. 2 ] does not apply to execution proceedings, and a judgment-debtor is not bound to apply for issue of notice to the decree-holder when he deposits the decree-amount under Section 253 of the Code.

*Per Palpu Pillai, J.*—Section 362 applies also to execution proceedings, and a judgment-debtor is bound to apply for issue of notice to the decree-holder when he deposits the amount under Section 253, in order to escape liability for further payment of interest.— **12 T. L. J.,** *82.*

6. Where under a decree money is payable at once, the execution Court has no jurisdiction to vary the decree, by granting time to the judgment-debtor for payment. **18 T. L. J.,** *614.*

**Sec. 254 : 1.** After Section 253, there was the following Section in Regulation II of 1065 :—

"254. *Agreement to give time to judgment-debtor.*—Every agreement to give time for the satisfaction of a judgment-debt

shall be void, unless it is made with the sanction of the Court which passed the decree, or whose duty it is to execute the decree.

*Agreement for satisfaction of judgment-debt.*—Every agreement for the satisfaction of a judgment-debt, which provides for the payment, directly or indirectly, of any sum in excess of the sum due or to accrue due under the decree, shall be void unless it is made with the like sanction.

Any sum paid in contravention of the provisions of this Section shall be applied to the satisfaction of the judgment-debt; and the surplus, if any, shall be recoverable by the judgment-debtor."

**2**. The above Section has been omitted, as is done in the British Indian Code. Section 257-A (corresponding to the above Section) of the Indian Code of 1882 was enacted in view to protect the interests of judgment-debtors against the exercise of undue pressure by decree-holders. In practice, the provision was found to be of little service to judgment-debtors. Section 16 of the Contract Act appears to afford adequate protection where required. So, that Section has been omitted. The sanction of the Court is not necessary for agreements provided for in the Section between the decree-holder and judgment-debtor; and such agreements would be given effect to, if otherwise valid.

---

**Or. XXI, r. 2** [= S. 255 = *Or. XXI, r. 2*]

I. The corresponding Section of Regulation II of 1065 ran as follows:—

"255. *Payment to decree-holder.*—If any money payable under a decree is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, or if any payment is made in pursuance of an agreement of the nature mentioned in Section 254, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree.

The judgment-debtor also may inform the Court of such payment or adjustment and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after due service of such notice, the decree-holder fails to appear on the day fixed, or having appeared fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

Unless such a payment or adjustment has been certified as aforesaid, it shall not be recognised as a payment or adjustment of the decree by any Court executing the decree."

II. *Sub-Rule (1).*—The addition of the words "of any kind" after the word "decree" is intended to make it clear that the Rule applies not only to money decrees, but to mortgage decrees, partition decrees and other decrees under which money is payable.

See also 1 T. L. J., 82.

*Sub-Rule (3).*— It will be noted that the words "as a payment or adjustment of the decree" which occurred after the word "recognised" in the last Para of the old Section have been omitted. In regard to this, the Indian Special Committee said:— "The Committee have omitted certain words from the last paragraph of Section 258 of the Code in order to make it clear that the Court cannot recognise a payment or adjustment which has not been certified for any purpose whatsoever. It follows that an uncertified payment or adjustment cannot operate to prolong the period of limitation for applying for execution under the Limitation Act."

III. For Form of Notice to show cause why a payment or adjustment should not be recorded as certified, see Appendix E, Form No. 1.

**Case Law.**

**1.** The plaintiff's cause of action in the case was the defendant's failure to certify satisfaction of the decree, and plaintiff was entitled to claim as damages what he has lost by the execution of the decree.—

**7 T. L. R.,** ***59.***

**2.** A judgment-creditor whose decree debt was satisfied out of Court, failing to certify the fact to Court and having brought certain property belonging to the debtor to sale for satisfaction of the decree, the debtor sued to cancel the sale or to obtain such relief as the Court deemed proper. The lower Court dismissed the suit as not maintainable. On Appeal:

*Held.*— The debtor cannot seek to set aside the sale complained of.

However, a suit is maintainable as against the judgment-creditor for damages caused to the decree-debtor by the former's breach of contract to certify to Court the satisfaction of the decree. The contract to certify to Court the payment of the decree-debt is implied in the payment, and, therefore, the dismissal of the suit altogether is wrong.—

**11 T. L. R.,** ***27.***

Fol.—13 T. L. R., 10.
Ref.—21 T. L. R., 206.
26 T. L. R., 83
(= 1 T. L. J., 284).

**3.** Section 255 of the Code renders it obligatory on a decree-holder to certify to Court payments made to him out of Court under the decree.

Payments made out of Court in satisfaction of a decree, but not certified to Court may be recognised by a Criminal Court for the purposes of a prosecution under Section 210 of the Penal Code (old).—

**11 T. L. R.,** ***46.***

**4.** The question having been referred to a Full Bench whether a regular suit could be instituted by a *bona fide* purchaser for value, for the cancellation of a sale of property held under a decree which had been satisfied out of Court, but the adjustment of which had not been certified to the execution Court under Section 255 of the Code of Civil Procedure :

*Held* (Govinda Pillai, J., dissenting).—A suit does not lie to set aside a Court sale held under a decree adjusted out of Court and not certified to the Court.—

**13 T. L. R.,** ***10.***

Ref.—26 T. L. R., 83
(= 1 T. L. J., 284).

**5.** A, a decree-holder who had assigned his decree to B (his wife), received a certain sum of money from C, the decree-debtor, and agreed to certify satisfaction to the Court, but failed to do so and tried to execute the decree as the agent of B. C petitioned the Court to require A to acknowledge payment. His petition being dismissed, C prayed for an injunction to issue to A not to execute the decree and the Court granted a perpetual injunction prohibiting A from executing the decree.

*Held.*—(1) The Court, before issuing an injunction of the nature granted by it, must be satisfied that the damage caused or likely to be caused is unascertainable by any standard. The plaintiff in the case can always, if his claim is enforceable in law, recover adequate compensation for any damage sustained by A's failure to carry out the agreement and the damage that may be caused being of an ascertainable character, an injunction should not have been granted against B.

(2) Under Section 255 of the Code of Civil Procedure now in force, C may, through the Court, call upon A to certify adjustment of the decree. The order passed against C is appealable under Section 557 [=new Section 82 and Order XLII, r. 1]. Failing this summary remedy, which the Code provides to prevent execution of decrees by fraud, C's course is to sue for damages.—

**13 T. L. R.,** ***171.***

Appr.—43 T. L. R., 65.

6. Section 255 expressly concedes to the defendant in a decree which had been adjusted out of Court, the right of applying for the recording of such adjustment after notice to the decree-holder, and makes it incumbent upon the Court to enquire into the matter and pass such orders as it thinks fit. The consent of the decree-holder is not a condition precedent or essential to an order for recognising and recording of adjustments of decrees, if such adjustments be proved to have been duly made by the parties out of Court, and the provisions of Section 255 would be rendered wholly nugatory, were a decree-holder who at first made an adjustment of his decree with the judgment-debtor, to be permitted to back out of his first agreement, and successfully prevent the recognition of the agreement by the Court simply by denying subsequently in Court the factum or validity of the agreement. It would simply be a fraud if the decree-holder is to execute a decree already adjusted, and Section 255 is intended to obviate the perpetration of such frauds. The question whether a decree has been adjusted and thus rendered incapable of execution is one which the Court executing the decree is bound to determine in execution under the terms of Section 238 of the Code, [new Section 40], which enacts in distinct terms that all questions between the parties to the suit in which the decree was passed, relating to the discharge or satisfaction of the decree, should be determined in execution and not by a separate suit.—

**14 T. L. R. App.,** ***54.***

Fol.—16 T. L. J., 378.

7. (1) Section 255 of the Civil Procedure Code applied only to the case of parties who stood in the relation of judgment-debtor and judgment-creditor at the date of the transaction contemplated therein.

(2) The money paid in Court under compulsion of fraudulent legal process and in order to regain possession of property wrongfully distrained in execution of a decree, was recoverable by a separate suit as money had and received to the use of the payor.—

**15 T. L. R.,** ***107.***

Fol.—15 T. L. R., 151.

8. The adjustment of a decree out of Court subsequent to its attachment under Section 270 of the Civil Procedure Code [= Or. XXI, r. 51] cannot be recognised by the Court.

The non-service of notice of attachment on the judgment-debtor is not fatal to the validity of an attachment under Section 270, as notice to parties is prescribed only for attachment of simple debts not secured by a decree and of other movable property.

**18 T. L. R.,** ***205.***

Fol.—42 T. L. R., 342
14 T. L. J., 145.
Ref.—18 T. L. J., 207.

9. In execution of a decree for partition obtained by P against D, both parties executed Kyohits acknowledging partition and promising to report satisfaction on the alleged oral promise of D to remove a structure of D jutting into the land delivered to P. In the suit by P to enforce the agreement, the District Judge reversing the Munsiff's decree, held that the agreement had no consideration and hence it was no contract and that P's remedy was to apply for enforcement of the decree and not by a separate suit.

*Held.*—As the agreement answered all the conditions of a contract under Sections 2 and 10 of the Indian Contract Act, it was a valid contract. Such a contract would operate by way of substitution and extinction of the remedy under the decree, and where an adjustment extinguishes all remedies under the decree by way of execution, it is open to the parties to seek their remedies on the same as an independent contract.— **20 T. L. R.,** ***243.***

Ref.—26 T. L. R., 83
(= 1 T. L. J., 284).

10. In an application for execution, the decree-holder stated that a portion of the decree amount had been paid off and prayed for execution of the rest of the decree. The District Judge held that as no record of part satisfaction of the decree was made by the Court on the application, such part satisfaction could not be taken notice of.

*Held.*—No such recording by the Court was necessary either under Section 255 or under Section 228 [ = Or. XXI, r. 9 (2) ] under which the application was put in. Under Section 255, it is the decree-holder that has to certify payment and under Clause (*e*) of Section 228, the decree-holder is bound to state in his application for execution what adjustment, if any, of the matter in dispute had been made between the parties after decree. It is only when the decree-holder fails to certify, that the judgment-debtor may inform the Court and get satisfaction recorded.— **21 T. L. R.,** ***152.***

11. A and B executed a hypothecation deed to P in satisfaction of a decree obtained by the latter against A. P without entering up satisfaction of the decree sued on the deed for the recovery of the hypothecation amount. It was contended on behalf of A and B that the failure of P to enter satisfaction of the decree was a bar to the suit and that as there was no delivery of the hypothecation deed, the agreement was not a completed transaction.

*Held.*—(1) P's failure to enter up satisfaction of the decree was not a bar to the suit.

(2) The provisions of Sections 254 and 255, C. P. C., do not prohibit a fresh agreement between the parties to the decree to liquidate the decree-debt in any other manner if they see fit.

(3) The mere registration of the hypothecation deed unaccompanied by delivery of the deed did not evidence the intention of the parties to treat the transaction as a completed one.— **24 T. L. R.,** ***254.***

Con.—33 T. L. R., 260
(= 7 T. L. J., 344).

12. In a suit by a judgment-debtor against a decree-holder for the excess amount realised by the latter in execution of the entire decree without giving credit for the uncertified payment made out of Court, the cause of action arises only from the date when the judgment-debtor is actually damnified by payment of the debt a second-time and not from the date of the first payment nor from the date when steps in execution were taken against him.

*Per Sadasiva Iyer, C. J.*—The action is for damages caused by the decree-holder's promise not to recover in execution more than the balance remaining due and this promise is not broken till excess money is realised.— **1 T. L. J.,** ***59.***

13. When a decree directed that defendant should pay plaintiff interest on a particular amount till certain property was delivered over by the former to the latter, and it was contended in execution, that plaintiff was not entitled to interest after a certain date when, according to the defendant, the property was delivered over to him (plaintiff) outside Court, and that such adjustment, though uncertified, could be recognised and acted upon by the Court, as Section 255 applied only to money decrees :

*Held.*—(1) Section 255 applied not to money decrees alone, but to all kinds of decrees including those directing delivery of immovable property.

(2) As the adjustment set up had not been certified to Court under Section 255, within the time prescribed by law, the Court could not recognise the same.

(3) Therefore, plaintiff was entitled to get the interest claimed even for the period subsequent to the alleged uncertified adjustment of the decree.— **1 T. L. J.,** ***82.***

Fol.—6 T. L. J., 469,
17 T. L. J., 755.

14. A decree for partition and recovery of plaintiff's share was adjusted out of Court by a partition deed among the parties. After sixty days of this partition deed, the plaintiff applied for execution of the decree which the defendant opposed in view of the partition deed. The plaintiff opposed the filing of the deed of adjustment as it was out of time. For the defendant, it was contended that Section 255, C. P. C., did not apply to partition decrees, and that even if it was applicable, the defendant in a partition suit being himself in the position of a decree-holder could certify adjustment under Section 255 at any time notwithstanding Article 143 of the Limitation Regulation.

*Held.*—(1) Section 255 applied to adjustments of all decrees and not alone to decrees for money, and as the adjustment in the case had not been certified to the Court within time it could not be recognised as an adjustment by the execution Court.

(2) The defendant in a partition decree could not be deemed to be a decree-holder so as to be entitled to certify the adjustment of the decree to the Court at any time notwithstanding the provisions of Article 143 of the Limitation Regulation, as he was not legally competent to discharge his liability under the decree by himself certifying adjustment of it to the Court.—

**6 T. L. J.**, *469*.

Fol.—17 T. L. J., 755.

15. Where a judgment-debtor in a suit executed a mortgage and directed the mortgagee to pay the decree debt and the mortgagee made payment out of Court to the decree-holder:

*Held.*—The mortgagee cannot, under Section 255 of the Civil Procedure Code, claim certificate of payment.

The Section apparently contemplates that the application should be by the judgment-debtor himself. Otherwise one would have expected some such words as 'the judgment-debtor or any other person on his behalf may inform the Court, &c.' Regarding the application as one that must be made by the judgment-debtor himself, the present respondent would not be a recognised agent as defined in Section 33 of the Code [= Or. III, r. 2]. He is indeed a stranger having no interest in making the payment to the decree-holder, as the decree would in no event be executed either against him personally or against the property mortgaged to him.—**10 T. L. J.**, *466*.

16. A decree-holder-purchaser is not debarred from certifying satisfaction of the decree at any time before the sale is made absolute. Section 255 does not make it obligatory on the parties to abstain from adjusting the decree out of Court. It provides, however, that when the decree has been so satisfied, the decree-holder shall certify satisfaction. If the decree holder fails to certify as enjoined, the judgment-debtor is enabled to apply to the Court within a specified period to compel the decree-holder to certify such satisfaction. There is nothing in the scheme or scope of the Chapter (XIX) relating to the execution of decrees which deprives the parties of the liberty to settle their differences out of Court at any time before the decree is effectually satisfied by virtue of the termination of the several modes of execution prescribed by the Legislature.—

**38 T. L. R.**, *241*
(= **12 T. L. J.**, *162*).

17. Section 255, C. P. C., does not mention any certificate and there is, therefore, no particular form in which the decree-holder has to certify payment. The Section would be satisfied if the decree-holder were to inform the Court orally of the payment.

The return of the process-server with the signature of the plaintiff, or of an agent of the plaintiff authorised to certify satisfaction on his behalf, might be taken by the Court as sufficient certification to satisfy Section 255.— **15 T. L. J.**, *293*.

*Courts executing Decrees.*

Lands situate in more than one jurisdiction.

3. Where immovable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more Courts, any one of such Courts may attach and sell the entire estate or tenure.

---

**18.** When the assignee of a decree applies for recognition of the assignment, it is open to the judgment-debtor to object on the ground that he has discharged the decree-debt to the assignor, although such discharge has not been certified to the Court. - **15 T. L. J.,** *379*

**19.** A mere offer by post to pay the amount due is not a valid tender. Again, a plea of tender before action must be accompanied by a payment into Court after; otherwise the payment is ineffectual.— **16 T. L. J.,** *383.*

**20.** In execution of the decree in the case, a difficulty was experienced in putting up the wall as per the directions in the decree. Both parties recognised the difficulty. They appear to have each given up some technical right under the decree in favour of the other, and arrived at an agreement as to how the wall might be built up without detriment to either party in satisfaction of the decree. They jointly put in a petition before the lower Court evidencing the adjustment made by them. The Court ordered the further construction of the wall to proceed in accordance with that petition.

The defendant put in a petition to have that order and the settlement arrived at between the parties as evidenced by their joint petition cancelled on the ground that they amounted to an amendment or variation of the decree which the Court had no jurisdiction to make in execution.

*Held.*—(1) The defendant's contention was unsustainable. The parties might effect an adjustment of the decree outside the Court and have it certified in Court. The recognition of that adjustment by the Court would not amount to the Court varying the decree. Section 255 applies to the matter.

(2) Section 255 applies not to money decrees alone, but to decrees of all kinds.— **17 T.L. J.,** *755.*

**21.** Where in a petition made by the judgment-debtor under Clause (2) of Section 255 for certifying payment or adjustment of the decree out of Court, the date of payment or adjustment is not given, the Court is competent to require the judgment-debtor to state the date, as it is necessary in view of the period of limitation prescribed for such petitions. If the judgment-debtor does not comply with the requisition, the Court would be justified in dismissing the petition and in refusing to consider it on the merits.— **19 T. L. J.,** *538.*

**22.** The principle that the executing Court cannot take notice of any adjustment made out of Court which is not certified cannot apply where the decree-holder admits the adjustment and agrees to be bound by it. In such a case, if the decree-holder applies for execution in violation of the terms of the adjustment, the Court can and ought to investigate the terms thereof.— **19 T. L. J.,** *710.*

**23.** See also—
Sec. 108.—**35 T. L. R.,** *263* (=**9 T. L. J.,** *430*).
Or. XXI. r. 1.—**9 T. L. R.,** *68.*
**11 T. L. R.,** *141.*
„ „ r. 51.—**18 T. L. J.,** *207.*

---

Or. XXI, r. 3 [= „ = *Or. XXI, r. 3*]

This Rule is the same as the corresponding Rule in the British Indian Code. The

4. Any Court sending a decree for execution to another Court may send it direct to that Court.

Mode of transfer.

5. The Court sending a decree for execution shall send—

Procedure where Court desires that its own decree shall be executed by another Court.

(a) a copy of the decree;

(b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied; and

(c) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect.

---

Indian Special Committee said:—"The Committee have inserted this Rule to provide for cases, which they are told are not uncommon, of an estate being situated within the jurisdiction of two or more Courts. There are decisions on this point, but they are not harmonious, and the Committee think it well to determine the law definitely."

---

**Or. XXI, r. 4** [= S. 218, last Para = *Or. XXI, r. 5*]

I. The corresponding British Indian Rule, which is the same as the last Para of Section 218 of the old Regulation, is as follows:—

"5. *Mode of transfer.*—Where the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, where the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed."

The above was adopted in the original Bill. But the Select Committee substituted the existing Rule.

II. See Sections 35-37 *Supra*, for the other Paragraphs of the old Section 218, and the cases thereunder.

---

**Or. XXI, r. 5** [= S. 219 = *Or. XXI, r. 6*]

For Form of Order sending decree for execution to another Court, see Appendix E, Form No. 3.

For certificate of non-satisfaction of decree, see Appendix E, Form No. 4.

**Case Law.**

1. The requirements of Section 219, C. P. C., are virtually satisfied when one Court intimates in writing to another, the nature of the decree sought to be transferred and the amount remaining due thereunder, even though there has been no formal transfer.— **2 T. L. J., *100*.**

2. See also.—

Or. XXI, r. 22.—**6 T. L. R. App., *2*.**

6. The Court to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof, unless the Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

Court receiving copies of decree, etc., to file same without proof.

7. Where such copies are so filed, the decree or order may, if the Court to which it is sent is the District Court, be executed by such Court or be transferred for execution to any subordinate Court of competent jurisdiction.

Execution of decree or order by Court to which it is sent.

**Or. XXI, r. 6** [= S. 220 = *Or. XXI, r. 7*]

I. The words "or of the jurisdiction of the Court which passed it" which occurred after the words "or of the copies thereof" in Section 220 of the old Regulation have been omitted. Also, the word "former" which occurred after the words "unless the" has been dropped.

II. The omission of the words in the British Indian Rule was made by the Select Committee who said :— "In our opinion a Court executing the decree of another Court ought not to go into any question as to the jurisdiction of the Court which passed it."

*India Gazette dated 15-2-1908, Pt. V.*

III. Note the change in the provision as regards the power to enquire into jurisdiction, with reference to the cases given below so far as that is concerned.

**Case Law.**

1. Under Section 220 of the Code, a certificate of non-satisfaction of a decree, sent for execution to another Court is conclusive proof of the truth or genuineness of the decree, of the correctness of the copy thereof transmitted for execution, and of the jurisdiction of the Court that passed the decree to pass it ; but nothing in the Section prohibits a Court executing a decree to ascertain whether the expenses incidental to the execution of the decree have been correctly calculated or charged to the judgment-debtor.— **12 T. L. R.,** ***39.***

2. (1) The provisions of Section 222 [new Section 38] read with Section 220, make it sufficiently clear that the Court to which a decree has been sent for execution possesses the same powers in executing the decree as the Court which passed the decree and that it is within the power of such Court to go into the question whether the Court which sent the decree for execution had jurisdiction to pass the decree.

(2) A Court has no jurisdiction to pass a decree against a person who was dead at the time of the suit. Such a decree is void *ab initio*. It is not in any sense a decree and is not susceptible of execution.

(3) The fact that the deceased man's legal representatives, to whom notice of execution was sent, took no steps to repudiate all liability under the decree, makes no difference.— **30 T. L. R.,** ***171*** **(=4 T. L. J.,** ***408*****).**

Fol.—14 T. L. J., 402.

3. Under Section 220 C. P. C., a Court to which a decree is sent for execution is competent to enquire into the jurisdiction of the Court which passed the decree. This provision applies also to domestic decrees.

Order XXI, Rule 7, of the British Indian C. P. C., does not contain the above provision. The provision was embodied in Section 225 of the British Indian C. P. C., of 1882 ; but it was omitted in the Code of 1908.— **14 T. L. J.,** ***403.***

*Application for execution.*

8. Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof.

Application for execution.

9. (1) Where a decree is for the payment of money, the Court may, on the oral application of the decree-holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment-debtor, prior to the preparation of a warrant if he is within the precincts of the Court.

Oral application.

---

**Or. XXI, r. 7** [= S. 221 = *Or. XXI, r. 8*]

The words "or be transferred for execution to any subordinate Court of competent jurisdiction" have been substituted for the words "or by any subordinate Court which it directs to execute the same."

**Case Law.**

See Sec. 36.—**39 T. L. R.,** *211* (= **14 T. L. J.,** *207*).

[Note the change in the Rule.]

**Or. XXI, r. 8** [= S. 223, Para 1 = *Or. XXI, r. 10*]

I. The first Para of Section 223 of the old Regulation was as follows:—

"223. *Application for execution.*—When the holder of a decree desires to enforce it, he shall apply to the Court which passed the decree, or if the decree has been sent under the provisions hereinbefore contained to another Court, then to such Court or to the proper officer thereof."

II. For the other Paragraphs of Section 223, see Section 41 *Supra* and Rule 19 of this Order *Infra.*

III. See Section 34 for "Court which passed the decree" and Section 35 for "Court by which decree may be executed".

**Case Law.**

The Principal and Additional Munsiffs' Courts at a station cannot be deemed to constitute a single Court. The above two Munsiffs are not Officers attached to the same Court, but are Officers attached to two distinct and independent Courts. Therefore decrees passed by these Courts can only be executed by the Court which passed them unless a transfer has been made from one Court to the other.

Sections 3, 8 and 12 of the Civil Courts Regulation are not inconsistent with this view.

Merely because Articles 509 and 535 of the Civil Courts' Guide are apparently inconsistent with the provisions of the Civil Courts' Regulation, those Articles cannot be deemed *ultra vires*, as long as they do not contravene any provisions of the Civil Procedure Code. Even otherwise, the Rules regulating procedure cannot amount to a deprivation of the powers conferred under the Civil Courts' Regulation, but could only tantamount to directions for the mode in which such powers are to be exercised consistently with the rights that other Courts of concurrent jurisdiction possess in the matter.

A reading of Articles 509 and 535 of the Civil Courts' Guide shows that the intention has been to treat the institutions presided over by the Principal and Additional Munsiffs as distinct and independent Courts.—**18 T. L. J.,** *780.*

(2) Save as otherwise provided by Sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars namely :—

Written application.

(*a*) the number of the suit;

(*b*) the names of the parties;

(*c*) the date of the decree;

(*d*) whether any appeal has been preferred from the decree;

(*e*) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;

(*f*) whether any, and (if any) what previous applications have been made for the execution of the decree, the dates of such applications and their results;

(*g*) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;

(*h*) the amount of the costs (if any) awarded;

(*i*) the name of the person against whom execution of the decree is sought; and

(j) the mode in which the assistance of the Court is required, whether—

(i) by the delivery of any property specifically decreed;

(ii) by the attachment and sale, or by the sale without attachment, of any property;

(iii) by the arrest and detention in prison of any person;

(iv) by the appointment of a receiver ;

(v) otherwise, as the nature of the relief granted may require.

(3) The Court to which an application is made under Sub-rule (2) may require the applicant to produce a certified copy of the decree.

---

Or. XXI, r. 9 (1) [ = S. 252 = *Or. XXI, r. 11* (1) ]

" r. 9 (2) [ = S. 228 = *Or. XXI, r. 11* (2) ]

" r. 9 (3) [ = " = *Or. XXI, r. 11* (3) ]

I. This Rule is the same as the corresponding Rule in the British Indian Code.

II. *Sub-Rule (1).*—**1.** The corresponding Section of the old Regulation was as follows:

"252. *Power to direct immediate execution of decree for money not exceeding rupees 500.*—When a decree is passed for a sum of money only, and the amount decreed does not exceed the sum of rupees five hundred, the Court may, when passing the decree, on the application of the decree-holder, order immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court, or against his movable property within the same limits.

*Explanation.*—It is not necessary to verify the application presented under this Section."

The above Section was adopted from Section 256 of the Indian Code of 1882. That Section fixed the amount of the decree at Rs 1000 and also dispensed with a written application. In adopting that Section as Section 252 of the old Regulation, the Statement of Objects and Reasons thus remarked on the changes introduced therein:—"To mitigate the danger of allowing immediate execution of decrees on oral applications for such large sums as Rs. 1000, Section 256 is so amended as to empower Courts to grant such execution for sums not exceeding Rs. 500, on *unverified* but *written* applications. The verification of such applications is not insisted upon, as the object of the British Legislature in allowing oral application, was, presumably, to meet the cases in which verification could not be had, owing to the absence of the judgment-creditor."— *Para 38.*

**2.** The Notes on Clauses say :—

"Rule 9 provides for an oral application to issue a warrant of arrest against a judgment-debtor, if he is within the precincts of the Court at the time of the passing of the decree. There is no limit mentioned as to the amount for which such an application may be made, leaving it to the discretion of the Court as to when such an application may be allowed."

**3.** The Indian Special Committee said:—"The Committee have omitted the limitation imposed under the existing Code on oral applications for immediate execution. They see no reason why this limitation should be preserved."

**4.** The changes made in the provisions of the old Section by the present Rule are: —(1) Under Section 252, immediate execution could be issued only if the amount decreed did not exceed Rs. 500. Under the present Rule, there is no limit to the amount of the decree. The decree must be for the payment of money.

(2) Under Section 252, a written application is necessary to enable the Court to issue a warrant of arrest against the person of the judgment-debtor. Under the present Rule, an oral application will suffice and the

Court is empowered to order immediate arrest of the judgment-debtor prior to the preparation of a warrant, if he is within the precincts of the Court.

(3) Execution could not issue against the movable property of the judgment-debtor on an oral application.

**5.** See Sub-section (3) of Section 100 *Supra.*

III. *Sub-Rule* (2).—**1.** This corresponds to Section 228 of Regulation II of 1065, which was as follows :—

"228. *Contents of application for execution of decree.*—The application for the execution of a decree shall be in writing verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars (namely) :—

(*a*) the number of the suit ;

(*b*) the names of the parties ;

(*c*) the date of the decree ;

(*d*) whether any appeal has been preferred from the decree ;

(*e*) whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree ;

(*f*) whether any and what previous applications have been made for execution of the decree and with what result ;

(*g*) the amount of the debt or compensation, with the interest, if any, due upon the decree, or other relief granted thereby ;

(*h*) the amount of costs, if any, awarded;

(*i*) the name of the person against whom the enforcement of the decree is sought ; and

(*j*) the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, by the arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise as the nature of the relief sought may require."

**2.** For date of the decree (Clause (*c*) above), see Rule 7 of Order XX, ***Supra.***

IV. For Form of Application for Execution of decree, see Appendix E, Form No. 6.

**Case Law.**

(*Section 228*).

**1.** In an application for execution, the decree-holder stated that a portion of the decree-amount had been paid off and prayed for execution of the rest of the decree. The District Judge held that as no record of part satisfaction of the decree was made by the Court on the application, such part satisfaction could not be taken notice of :

*Held.*—No such recording was necessary either under Section 226 or Section 255 [ = Or. XXI, r. 2 ]. Under Section 228, Clause (*e*), the decree-holder is bound to state in his application what adjustment, if any, of the matter in dispute had been made by the parties after decree. It is only when the decree-holder fails to satisfy, that the judgment-debtor may inform the Court and get satisfaction recorded.—

**21 T. L. R.,** ***152.***

**2.** Though a re-attachment after decree of the properties which have been already attached before judgment is not necessary, the decree-holder who has effected the attachment before judgment is not entitled to enforce his decree without putting in an execution petition in the prescribed form—see Sections 228 [ new Section 41 ] and 228.

**2 T. L. J.,** ***100.***

**3.** The non-production of the copy of the decree with an application in execution does not make the application, one not in accordance with law, as such production is not required under Section 228.

A non-compliance with Rule 204 of the Civil Courts' Guide (based on Civil Circular

No. 57 of 1079) which insists on the production of the copy of the decree, will not render the application satisfying the requirements of Section 228, one not in accordance with law.

The proper view to take of Rule 204 of the Civil Courts' Guide is "not that it prescribes the essentials which an application for execution must contain and which are necessary to constitute the application itself an application in accordance with law, but that it requires something further besides the application itself, an accompaniment extraneous to the application as a condition precedent to further action by the Court executing the decree."—

43 T. L. R., *161*
(= 18 T. L. J., *7*).

**4.** The final decree was passed on 21-12-1079, for money to be recovered from the assets of the deceased debtor. The decree was kept alive until 1088. On 6-8-1089, a fresh application for execution was made, and the debtor's properties were placed under attachment. The application was thereafter dismissed for default of further prosecution. The next application was made on 28-5-1091 for sale of the attached properties. In the meantime, an assignee of a hypothecation bond on the security of the same properties obtained a decree and proceeded to execute it; but the decree was finally vacated. On 28-8-1098, the present application was made for proceeding with the sale of the attached properties in pursuance of the prior execution application of 1091. The District Judge allowed the decree-holder to proceed with the execution of the decree, on the ground that his petition of 1098 did not fall within Article 152 of the Limitation Regulation and that a decree-holder's petition for continuance of the proceedings on an execution petition which had not been finally disposed of was not subject to any rule of limitation and could be made at any time. The defendant appealed. The question raised was referred to a Full Bench.

*Held.*—Article 152 is no doubt expressed in terms appropriate to a residuary provision that is intended to cover all applications whatsoever, that are not specifically dealt with elsewhere in the Schedule appended to the Regulation. If the provision really achieves this, there can be no doubt that the present application which is admittedly not provided for in any other Article in the Schedule must fall within its provision. But that is far from being the case. That the Article is not so comprehensive as it purports to be, and that there are certain applications which are not touched either by that Article or by any other provisions in the Regulations is clear from the Preamble to the Regulation itself which shows that it does not profess to deal exhaustively with the subject of applications, but confines itself to prescribing periods of limitation for "certain applications" only. This view is also supported by a long current of decisions which lays down that the statute does not apply to applications made in pending suits or for the exercise by the Court of functions of a purely ministerial character, or of powers which it would be bound to exercise *suo moto*, even in the absence of such applications and which it would have no discretion to refuse.

At any rate, Article 152 is not applicable to pending suits. The question then arises whether the same principle could not be extended to execution proceedings. There is this fundamental distinction between a suit and proceedings in execution, namely, that while in the case of a suit, the legal machinery is set in motion by the filing of a plaint and it goes on functioning through all the stages of a suit without there being any need for the suitor to intervene with interim applications for the purpose of keeping the machinery in action, in the case of execution proceedings the law contemplates the filing of successive applications for execution one after the other till the fruits of the decree are realised, the proceedings being temporarily brought to a standstill when one of such applications has been properly disposed of, and being resumed only

**10.** Where an application is made for the attachment of any movable property belonging to a judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

Application for attachment of movable property not in judgment-debtor's possession.

---

on the Court being moved to do so by the decree-holder by means of a fresh application in the form prescribed. Owing to this difference, the analogy of a pending suit cannot be applied to execution proceedings taken as a whole. But, the analogy of the pending suit may be taken to apply so far as that portion of the proceedings that is initiated by one of such applications is concerned so long as it remains pending. Between such portion of the execution proceedings and a pending suit, there appears to be no essential difference so far as the principle under consideration is concerned. On principle, therefore, there is no reason why the rule that applies to applications made in pending suits, should not also apply to applications made in furtherance of pending execution petitions. On this view, the application in question would be entirely outside the purview of the statute of limitations.

It is a well recognised principle that an application for execution of a decree may be treated as in continuation or revival of a previous application similar in scope and character, the consideration of which has been interrupted by the intervention of objections and claims subsequently proved to be groundless or has been suspended by reason of an injunction or the like obstruction. So long as proceedings initiated by the decree-holder are pending, his right to apply for their continuance accrues from day to day, *i. e.*, on every day on which the Court does not *suo moto* continue them, and the right to apply would not be barred till three years have elapsed after the proceedings have ceased to be pending.

In the case, the execution petition of Dhanu 1091 was pending on the date on which the application of 1098 was presented to proceed with the execution petition. It was not therefore subject to the law of limitation and was not barred (F. B.).—

**42 T. L. R.**, *362*
( = **16 T. L. J.**, *330*).

Ref. —18 T. L. J., 792.
19 T. L. J., 524.

**5.** See also—
Sec. 41.— **18 T. L. R.**, *29*.
**20 T. L. R.**, *255*.
Or. XXI, r. 1.— **18 T. L. J.**, *614*.

**Or. XXI, r. 10** [ = S. 229 = *Or. XXI, r. 12* ]

I. This Rule is the same as the first para of Section 229 of the old Regulation and Rule 12 of the British Indian Code.

II. Section 229 had the following second para not found in the corresponding Section 236 of the Indian Code of 1882:— "But no such inventory need be annexed to the application, where the movable property sought to be attached is in the possession of or under the control of the judgment-debtor."

In inserting this Para, the Statement of Objects and Reasons said :—"32. The addition made to Section 236 simply expresses what is implied by the Section as it stands in the British Code."

**Case Law.**

**1.** Section 239 [=Or. XXI, r. 15] makes it imperative on the Court to ascertain

11. Where an application is made for the attachment of any immovable property belonging to a judgment-debtor, it shall contain at the foot—

Application for attachment of immovable property to contain certain particulars.

(a) a description of such property sufficient to identify the same and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, a specification of such boundaries or numbers; and

(b) a specification of the judgment-debtor's share or interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

---

whether the requirements of Sections 228—231 [=Or. XXI, rr. 9-12] as may be applicable have been complied with, and if not, to reject the application or return it for amendment. If the application did not contain a list of the properties to be attached and sold, it would be defective and incapable of execution.— **20 T. L. R.,** *255.*

Fol —4 S. D., 188.
19 T. L. J., 979.
Ref.—18 T. L. J., 698.

**2.** See also—
Sec. 41.—**18 T. L. J.,** *698.*

---

Or. XXI, r. 11 [= S. 230 = *Or. XXI, r. 13*]

I. The words "in case such property ......boundaries or numbers" are new.

II. Section 230 had the following second Para:—" Every such description and specification shall be verified in manner hereinbefore provided for the verification of plaints."

**Case Law.**

**1.** An execution application for arrest of judgment debtor's representatives and for attachment of properties was put in within twelve years of the date of the decree, but was not accompanied by a list of properties as required by Section 230, C. P. C. This defect was sought to be cured by putting in a list of properties to be attached more than fifteen days after the execution had become barred. The Munsiff then cancelled the attachment of properties ordered by him on two former occasions.

*Held.*—The defect could not be cured in the manner stated above.

The Munsiff had power to cancel the previous orders passed by him. These orders were not passed on the date fixed for hearing objections to execution nor on any date fixed by an adjournment order for such hearing. The question of the right to execution was therefore not "heard" and "determined" by the Court and the order was therefore clearly not *res judicata*. It is one of those orders called in English Courts "Orders of course", and it has been held that the Court has inherent jurisdiction to modify and alter such orders when the party against whom such an order is passed showing cause against the passing of the order. The Munsiff therefore when the matter was brought to his notice (after attachment) cancelled the orders for attachment which

12. Where an application is made for the attachment of any land which is registered in the revenue accounts, the Court may require the applicant to produce a certified extract from such register, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for the land, and the shares of the registered proprietors.

Power to require certified extract from register of revenue accounts.

13. (1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

Application for execution by joint decree-holder.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this Rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

---

had been made *per in curiam* as a matter of routine.— **4 S. D.**, *188.*

**2.** See also—

Sec. 41 — **3 T. L. J.**, *213.*

Or. XXI, r. 10 —**20 T. L. R.**, *255.*

**Or. XXI, r. 12** [= S. 231 = *Or. XXI, r. 14*]

**I.** The corresponding Section of the old Regulation was as follows :—

"231. ***When application must be accompanied by extract from Revenue accounts.***—If the property be an estate registered in the Revenue accounts, the application for attachment shall be accompanied by an authenticated extract from the accounts specifying the persons entered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for such land, the shares of the proprietors and other particulars entered in the accounts."

**Case Law.**

See under Order **XXI**, r. 10.

**II.** *Section 233 omitted.*—This Section empowered the High Court to transfer execution cases from one Court to another. There was no such provision in the Indian Code of 1882. The Statement of Objects and Reasons said :—"34. The absence of the power is greatly felt in cases in which either of the parties to the decree is related to the Judge. It is hardly necessary to point out that a Judge cannot be safely entrusted with the execution of the decree in which he is interested."

**Or. XXI, r. 13** [= S. 224 = *Or. XXI, r. 15*]

**I.** The first Para of Section 224 corresponding to Sub-Rule (1) was as follows :—

"224. If a decree has been passed jointly in favour of more persons than one, any one or more of such persons, or his or their representatives, may apply for the execution of the whole decree for the benefit of them all, or where any of them has died, for the benefit of the survivors, and the representative in interest of the deceased."

II. The Indian Special Committee said: —"The Committee have omitted the words "'or his or their representatives'. This will be covered by the general clause."

See Section 110 *Supra.*

III. Sub-Rule (1) is the same as the second Para of the old Section 224.

### Case Law.

1. A Mahomedan widow and her minor children, a son and a daughter, as plaintiffs obtained a simple money decree against the defendants for the Chitty amount due to them, and the first application for the execution of the decree was made three years and nineteen days after the date of the decree. The plea of limitation bar under Section 9 of the Limitation Regulation was raised.

*Held.*—When one of the decree-holders is a minor, the applicant for execution is entitled to the benefit of Clause 1 of Section 7 of the Limitation Regulation, and he may execute the decree for the benefit of all the decree-holders. As the right to execute the decree rests in him along with others, the joint decree-holder has to obtain the permission of the Court to execute the decree in order that the interests of his co-decree-holders may not suffer thereby (F. B.).— **20 T. L. R.,** *239.*

Dist.—23 T. L. R., 139.
Ref.—24 T. L. R., 241.

2. The decree was a joint one in favour of three plaintiffs; but as these would not agree to draw the decree-debt deposited in Court jointly, the Munsiff ordered payment of the money to the second and third plaintiffs on their furnishing security and directing the first plaintiff to seek his remedy by suit for the settlement of the disputes between the plaintiffs *inter se.* The District Judge, on appeal, varied the order by dispensing with the condition of giving security before drawing the money. On second appeal:

*Held.*—(1) The order passed by the Munsiff *re* the drawing of the deposited amount was in the exercise of the discretionary power vested in him under Section 224, and the law did not provide for an appeal against the order.

(2) A question of conflicting title between two persons holding a joint-decree was the proper object of a fresh suit between them. It is not one which can be raised before or determined by a Court of execution under Section 238 [now Section 40], since it is not one arising between the parties to the suit within the meaning of that Section.— **23 T. L. R.,** *245.*

Ref.—2 T. L. J., 5.
29 T. L. R., 81
(= 3 T. L. J., 362).
Fol.—29 T. L. R., 223
(= 4 T. L. J., 73).

3. A decree for redemption was obtained by three persons, of whom the first plaintiff was the Karanavan and the other two were junior members. Subsequent to the decree, first plaintiff paid the mortgage amount out of Court, obtained a registered release from the mortgagee and, subsequent to the redemption, again mortgaged the property. The satisfaction of the decree was not, however, reported to the Court by either of the parties. The third plaintiff applied to execute the decree for redemption, and the application was objected to by the other two plaintiffs and the mortgagee.

The Munsiff held that the matter came under the purview of Section 224, and dismissed the plaintiff's application on the merits. The District Judge, on appeal, holding that the proceedings before the Munsiff came under the purview of Section

298 [new Section 40] and therefore appealable, allowed the third plaintiff to execute the decree.

*Held.*—The objection to the execution of the decree was one between joint decree-holders, and as such the proper Section applicable to the case was Section 224. Hence no appeal lay to the District Court against the order of the Munsiff. The order of the District Court reversing the Munsiff's order was therefore *ultra vires.*—

**29 T. L. R.,** *223*
**( = 4 T. L. J.,** *73*).

Ref.—40 T. L. R., 151.

**4.** A decree for maintenance awarded one and a half Kottahs of paddy per mensem for the mother and her two minor sons who were the plaintiffs in a suit. The mother died and the two surviving decree-holders sought to execute the decree for the entire amount awarded by the decree.

*Held.*—The surviving decree-holders were entitled to realise by execution only their proportionate share.

No difficulty can arise if the decree, though in form passed jointly in favour of several persons, has determined the extent of the right possessed by each. Where the decree is silent about the respective rights of the joint decree-holders, and subequent to the decree, a portion of the rights to which the decree relates has been extinguished, say, by payment of a portion of the decree debt to one of the joint decree-holders, the judgment-debtor is entitled to credit for what he had paid to one of several joint decree-holders, to the extent of the share of the latter; in which case, the other joint-creditors cannot execute the decree for more than their own share. In the execution of a joint decree, when one decree-holder admits that the liability under the decree has been discharged wholly or in part, the extent of the right of such decree-holder and of the decree-holder seeking to execute the decree should be ascertained, and execution allowed only to the extent of the latter's right.

The present case does not fall under Section 224, as the Section can apply only when a joint-decree is capable of being executed still as a joint decree by all the decree-holders, or the surviving decree-holder, or decree-holders and the representative of those that are dead and nevertheless, some of them alone apply for the benefit of them all. Owing to the death of the mother in the case, whose right became extinct with her death, the decree was no longer executable as a joint decree for the benefit of all the decree-holders. By her death subsequent to the decree, there had been an effective discharge of the defendant's liability under the decree for her maintenance. Her right was not heritable; and the other plaintiffs could not be said to have succeeded to her right. Each of the plaintiffs had an independent right against the Tarwad for maintenance; and the decree was in effect three decrees consolidated into one and conferred separate divisible rights in the decree-holders which were not heritable. So that when the right of any one of the plaintiffs recognised by the decree became extinguished, the rights of the others were left intact.— **38 T. L. R.,** *219*
**(= 12 T. L. J.,** *46*).

Ref.—16 T. L. J., 850.

Application for execution by transferee of decree.

14. Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder :

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution :

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

---

**Or. XXI, r. 14** [= S. 225 = *Or. XXI, r. 16*]

**1.** The corresponding Section of the old Regulation was as follows :—

"225. ***Application by transferee of decree.***—If a decree be transferred by assignment in writing, or by operation of law, from the decree-holder to any other person, the transferee may apply for its execution to the Court which passed it ; and, if that Court thinks fit, the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder :

Provided as follows :—

(*a*) where the decree has been transferred by assignment, notice in writing of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to such execution :

(*b*) where a decree for money against several persons has been transferred to one of them, it shall not be executed against the others."

**2.** By the omission of the words "if that Court thinks fit," the discretion of the Court in recognising the assignment of a decree, and to grant or refuse the application for execution seems to have been taken away.

**Case Law.**

**1.** No appeal lies to the Zillah Court against an order of the Munsiff refusing to recognize an assignment of a decree. No assignment of a decree is valid unless notice of the same was given to the judgment-debtor who is entitled to have his objections thereto heard. No order passed by the Court without giving him an opportunity to exercise such right could bind him. The mere recording of a petition of assignment of a decree does not entitle the assignee to *sue* out execution.— **3 T. L. R. App., 36.**

Ref.—16 T. L. R. App., 43.
19 T. L. J., 1113.

2. No person has a right to be substituted as decree-holder at the execution of the decree, unless the decree be transferred to him by assignment or by force of law.—
**3 T. L. R. App.,** ***43.***

3. The Marumakkathayom law enables an Anandaravan to acquire by assignment special rights over the Tarwad property. The decree assigned to the Anandaravan can, at his instance, be executed against the Tarwad. The assignee not being the judgment-debtor is competent to accept the assignment from the creditor. In the case, the assignee who is the Anandaravan of the judgment-debtor is entitled to represent the judgment-creditor. In execution proceedings the question as to who supplied the assignee with funds to buy up the decree could not be gone into.—
**7 T. L. R. App.,** ***46.***

4. An assignee of an appealable decree takes the rights of his assignor, subject to the condition that it may be lost or modified by the appellate Court's order. He is not a necessary party in appeal and other subsequent proceedings though he may become a party thereto to enable him to protect his own interests, but not give validity to the final decree.

The final decree in such a case passed in pursuance of the Appellate Court's order, will bind the assignee, even though he was not a party to the proceedings wherein that decree was passed.

At the date when the first defendant in the case took the assignment, the decree assigned was capable of being contested by a special appeal. On the special appeal being preferred, the matter in litigation became *res sub judice* and ceased to be *res judicata.* The decree passed, on remand, which is the *final* decree, is therefore the only legally operative decree, and the decree that had been passed prior to the remand ceased to be of any legal efficacy. A person, who accepts an assignment of a decree against which an appeal is preferred or which is capable of being appealed against, is bound by the decree passed by the Appellate Court. If the law was otherwise, the result would be that "suits would be interminable."—
**9 T. L. R.,** ***75.***

Ref.—15 T. L. J., 312.

5. An assignee may sue in his own name without making the assignor a party, though the English Common Law is otherwise. The Courts have followed the rule of equity.

The absence of notice will not invalidate an assignment; it will *validate* any payment made by the debtor to the assignor in good faith, after the date of the assignment.
**9 T. L. R.,** ***81.***

6. An assignee of a decree has no right to call upon the decree-debtor to pay him the judgment debt, when there is an order of Court recording satisfaction of the decree. As the plea of discharge in the case was urged within the time allowed by law to compel the decree-holder to certify payment, the Court executing the decree enquired into it, found it proved, refused to recognise the assignment and recorded satisfaction of the decree. No appeal was preferred against the order discharging the decree.— **9 T. L. R.,** ***187.***

7. An order sanctioning or refusing to sanction an assignment of decree, is final, the aggrieved party's remedy being by regular suit.

An assignment of a decree obtained by a mortgagor against a mortgagee, made to a purchaser of the mortgagor's equity of redemption at a court-sale, is a valid transaction, and not void for want of consideration.
**9 T. L. R.,** ***209.***

Ref.—16 T. L. R. App., 43.
19 T. L. J., 1118.

8. A person who accepts an assignment of a decree against which an appeal is preferred, or which is capable of being appealed against, will be bound by the decree of the Appellate Court.—**9 T. L. R. App.,** ***21,***

9. The assignment of a decree is invalid unless recognized by the Court executing it; and where the Court declines to sanction an assignment, the decree must be taken as standing in the name of the assignor—the decree-holder, and no objection can be raised to his executing the decree. The defendant's objection that the assignment was executed for good consideration and is binding on the decree-holder, after objecting to the assignment, is untenable. The question of consideration is a matter between the assignor and assignee.— **12 T. L. R.**, *132*.

Ref.—19 T. L. J., 1113.
Rel.—18 T. L. J., 1216.

10. (1) Where the parties to a decree for partition are co-parceners, the assignment by any one of them, whether plaintiff or not, of his share in the property covered by the decree to another co-parcener is not invalid, there being no joint liability in respect of such share. In respect of such property co-parceners stand to each other in the position of decree-holders in respect of their own shares and of judgment-debtors regarding the share of others. Any co-parcener may move for execution of the decree, and such a decree is not governed by Clause (*b*) of the proviso to Section 225, C. P. C.

(2) The assignment by one judgment-debtor to another of the portion of the decree which related to costs in respect of which there was *joint* liability, was invalid under the provisions of Clause (*b*) of the proviso to Section 225, C. P. C.— **12 T. L. R.**, *182*.

11. A sued B (his Vakil) for damages for allowing an *ex parte* decree assigned to him (A) to become barred by B's neligence in not applying for execution. B contended that A took the assignment of an *ex parte* decree and had it transferred for execution to another Court; that subsequently the Court which passed the *ex parte* decree set it aside on the application of the defendant in that suit and passed a fresh decree in favour of the original plaintiff which was appealed against and affirmed by the District Court; and that the second decree not having been assigned to the present plaintiff or transferred for execution had become barred through the plaintiff's omission.

*Held.*—An *ex parte* decree that had been set aside was not revived by a second decree being passed in the same terms, but was replaced or superseded by the second decree. All proceedings taken on or in respect to the first, must be considered as cancelled when the first decree was set aside; and the second decree not having been assigned to the plaintiff or transferred for execution, the defendant could not apply for execution and was, therefore, not guilty of negligence. Where a Vakil is required to perform a duty which could not be legally performed, he cannot be held liable for its non-performance.— **13 T. L. R.**, *122*.

Ref.—28 T. L. R., 151
(= 3 T. L. J., 128).

12. (1) The assignments of decrees are perfectly legal and recognised by the Procedure law of the State, and when the assignee is unable to get his name substituted on the execution records as a decree-holder and take out execution, the only remedy of the assignee is a regular suit for a declaration and establishment of his rights as assignee of the decree, no appeal from the execution Court refusing to recognise the assignment being allowed by law.

(2) In cases of assignment of decrees, whatever rights the assignor possessed, including the right to enforce execution by a regular suit must be considered to have passed to the assignee under the deed of assignment, unless the deed embodies the reservation of any particular right in the transferor.— **14 T. L. R.**, *152*.

Overruled.—22 T. L. R, 172.
Dist.— 15 T. L. J., 312.
Ref.— 16 T. L. R. App., 43.
19 T. L. J., 1113.

**13.** A and B, becoming entitled to a mortgage lien held by T from Z on certain property, sub-mortgaged their right to X in 1060, executed another sub-mortgage to Y in 1062 without notice being given of the first sub-mortgage and assigned in 1063 the whole of their interest on the mortgage to R, the nephew of X, without making any reference to either of the two sub-mortgages in the deed of assignment. In 1067, N purchased the equity of redemption from Z, redeemed the mortgage held by R and obtained a deed of surrender which too contained no reference whatever to the sub-mortgages. R on obtaining his mortgage amount discharged Y's debt but not that of X, who, therefore, got a decree against A and B on his sub-mortgage and transferred it to R in 1071. In order to prevent the property passing into the hands of a stranger, N who knew nothing of these proceedings till R brought the property to sale, purchased it himself for a certain amount which he paid into Court and which was subsequently taken by A, B and R who are sued by N for the recovery of that amount;

*Held.*—(1) It was only when a sub-mortgagee was a party to a mortgage suit or was given notice of his rights, that he was, on equitable grounds, entitled to claim payment of what was due to him out of the mortgage amount.

(2) As the conduct of R in executing the decree after giving N a release deed has rendered the execution proceedings fraudulent, N was entitled to a decree as prayed for.

(3) As the actual loss accrued to N only when he had to pay R, the sub-mortgagee, a portion of the mortgage amount already paid to him as mortgagee, the cause of action arose only on the date N paid the sale amount into Court.— **15 T. L. R.,** ***151.***

Fol.—1 T. L. J., 59.

**14.** Where a District Judge declined to recognise the assignment of a decree made in favour of the Seshakaran of the debtor:

*Held.*—No appeal lay against the order. But as a Court of revision, the High Court might consider the propriety of the order passed by the Judge below, and pass such order as might be deemed proper.

The fact of the assignee being the Seshakaran of the judgment-debtor is not *per se* sufficient to invalidate the assignment. Seshakars acquire, with their self-acquisitions, special rights over their own Tarwad property. Such rights are recognised and enforced by the Courts. If the assignment is taken for value paid by the Seshakaran out of his self-acquisition, there is no objection to its recognition by the Court; but, if it is taken in his name *benami* for the judgment-debtor to defraud creditors, it should not be recognized.

The Zillah Judge was directed to dispose of the appellant's application for the recognition of the assignment after hearing any evidence that might be adduced by the contending parties.— **16 T. L. R.,** ***15.***

Ref.—15 T. L. J., 379.

**15.** No appeal lies against orders admitting or refusing to admit applications by assignees of decrees for execution and such orders cannot be treated as orders under Section 238 [new Section 40] of the Code of Civil Procedure.— **16 T. L. R.,** ***43.***

Fol.— 16 T. L. R. App., 43.
Overruled.—22 T. L. R., 172.

**16.** No appeal lies against an order refusing to recognise an assignment of a decree under Section 225, C. P. C. The assignee's only remedy is to establish his assignment by a regular suit and he becomes a representative under Section 238 [new Section 40] only after his assignment is accepted (F. B.). **16 T. L. R. App.,** ***43.***

Fol.— 17 T. L. R. App., 17.
Overruled.—22 T. L. R., 172.
Not Fol.— 4 S. D., 246.
Ref.— 19 T. L. J., 1113.

**17.** An application by the assignee of a decree to place him on the record as the decree-holder and to take further steps is a step in aid of execution of the decree so as to give a fresh starting point of limitation (F. B.).— **17 T. L. R. App.**, *17*.

Ref.—22 T. L. R., 172.

**18.** A notice under Section 225 of the Civil Procedure Code is not necessarily limited to an enquiry as to the *factum* of assignment alone. A question of limitation may be also enquired into and decided in an application under the said Section.

A decree-debtor was served with notice to state whatever objections he had to the execution of a decree on the application of its assignee under the said Section. The decree-debtor defaulted to make his appearance and a question of limitation had to be decided against him in the enquiry as per notice.

*Held.*—The decree-debtor was estopped from re-opening the question of limitation. **18 T. L. R.**, *1*.

Dist.—30 T. L. R., 171
(=4 T. L. J., 408).
Ref.—15 T. L. J., 379.
17 T. L. J., 276.
Fol.—17 T. L. J., 538.
Rel.—18 T. L. J., 380.

**19.** Orders under Section 225 Civil Procedure Code are also orders under the last Clause of Section 238, Civil Procedure Code, [new Section 40]. A dispute between two rival representatives is also one under Section 238, Civil Procedure Code, and appeals do lie from such orders.

"It is the assignment in writing from the decree-holder and not the recognition by a Court of him as a representative which makes the transferee a representative of a party to the suit" (F.B.).—**22 T. L. R.**, *172*.

Ref.—23 T. L. R., 214.
40 T. L. R., 151.
15 T. L. J., 431.
19 T. L. J., 649.
19 T. L. J., 1113.
Fol.—26 T. L. R., 67.
1 T. L. J., 86.
4 S. D., 246.
19 T. L. J., 602.

**20.** The plaintiff assigned to the defendant a decree obtained by him for a consideration of Rs. 300 out of which the defendant gave a pro-note for Rs. 150 and paid the balance in cash. The defendant's application to recognise the assignment was however, dismissed. Plaintiff brought the present suit for recovering the sum due under the pro-note. Defendant contended that as the assignment had failed, the pro-note had no consideration.

*Held.*—As the assignment had become complete by the execution of the deed and plaintiff had done nothing in derogation of the deed, the defendant could not set up failure of consideration on the ground that the assignment was not recognised.— **25 T. L. R.**, *101*.

Fol.—7 T. L. J., 323.

**21.** A separate suit to declare the plaintiff's right as assignee will not lie, the proper remedy being by way of application in execution and by way of appeal.

Recognition by Court is not necessary to vest the right to execute a decree in the assignee of the same. The transfer vests the right in the plaintiff and nothing remains to be done by the transferee to complete the assignee's right to execute the decree.

An assignor of a decree is liable to refund the amount of consideration received under the deed of assignment only if there is any defect of title as regards the thing assigned or if he does something in derogation of his deed which has the effect of

preventing the assignee from acquiring any right or title under the assignment.— **26 T. L. R.,** ***67.***

Fol.—7 T. L. J., 323.
Ref.—15 T. L. J., 379.
42 T. L. R., 348
(=16 T. L. J., 270).
19 T. L. J., 1113.
Dist.—18 T. L. J., 1216.

**22.** The assignment of a decree is complete without its recognition by the Court under Section 225, C. P. C.

A suit for a declaration of right by the assignee against the decree-holder might be maintained. The assignment confers a complete title as against the decree-holder in respect of the latter's right.

The assignment is in fact not a sale by one who had no *authority* to sell, but by one who had *limited* authority, the completion of the title requiring the election of some person authorised by law to elect to complete the vendee's title. The contract in such cases may be suspensive in its effect as in the case of sales by the manager of a Hindu family, an agent or a minor's guardian, but is not void under Section 65 of the Contract Act. The contract not being void, a suit for refund of consideration is not maintainable either under Article 47 or 79 of the Limitation Regulation as the assignor has not received the decree amount.

*Per Muthunayagom Pillai, J.*—There is no cause of action for refund of consideration, merely because there has been failure of consideration in the sense that the assignee has failed in his attempts to enforce the title created by the assignment and realise the debt assigned to him.— **4 S. D.,** ***246.***

Ref.—19 T. L. J., 1113.

**23.** Where a decree was as to a part joint and for the remainder several, so far as the defendants were concerned, and the transfer was only of that part of the decree that was not joint ;

*Held.*—Proviso (*b*) to Section 225 applies to joint decrees against several persons, and it only prohibits the purchase and execution of such a decree by one of the co-debtors.

In the case, so far as the assignment went, the purchase and execution related to the portion of the decree that was not joint ; and therefore, the Proviso would not apply to such a transfer.— **4 S. D.,** ***276.***

**24.** Where the assignee of a decree from the decree-holder applied to the Court *merely* to recognise him as entitled thereafter to execute the decree :

*Held.*—He should be so recognised as entitled to execute the decree in place of and with the same rights as the decree-holder.— **4 S. D.,** ***392.***

Ref.—19 T. L. J., 1113.

**25.** On an application by the assignee of a decree obtained by the Karanavan of a Marumakkathayam Tarwad, the assignment was recognised without notice to the decree-holder or his legal representative. In a suit by the junior members to set aside the assignment :

*Held.*—The recognition of the assignment was bad, and could not be sustained. Section 225, Proviso, Clause (*a*), is clear on the point.— **1 T. L. J.,** ***395.***

Ref.—19 T. L. J., 1113.

**26.** A decree for future mesne profits obtained by the Karanavathi of a Malabar Brahmin Illom, was assigned to K. The junior members of the Illom, brought an action to set aside the deed of assignment on the ground of want of consideration. The assignee in resisting the suit contended that the validity of the assignment could not be questioned in a regular suit. The Court upholding the contention dismissed the suit. Thereupon, the validity of the assignment was fought out in execution. The execution Court found that the deed was unsupported by consideration, but it upheld the

assignment on the ground that the decree-holder-assignor, as the Karnavathi of the Tarwad, was fully competent to deal with the decree regarding mesne profits, as mesne profits were nothing more than movable property belonging to the Tarwad. One of the junior members appealed against the said order. The assignee-respondent raised a preliminary objection that there was no appeal against the order passed by the lower Court and that the proper way, if any, for the appellant to obtain redress was by instituting a regular suit to set aside the assignment.

*Held.*—(1) Though C's proper remedy was by way of a regular suit, he not being a party to the decree and therefore not being entitled to come under Section 238, C. P. C., [new Section 40], yet as the assignee first successfully objected to the maintainability of the regular suit impeaching the validity of the assignment and contended that the matter was one which ought properly to be enquired into in execution, he was now estopped from contending that the execution Court had no jurisdiction to go into the matter.

"A party who has induced a Court to act without jurisdiction cannot be permitted when the validity of the order made for his benefit is challenged by way of appeal to take up an inconsistent position and to defeat the appeal by proof that the order was made without jurisdiction."

(2) The assignment was invalid for want of consideration; and as the assignment was alleged to have been made for consideration and as consideration was found against, it could not be upheld as a gift.—

**29 T. L. R.,** *81*
**(= 3 T. L. J.,** *363*).

Appl.—5 T. L. J., 128.

**27.** A Karanavan of a Marumakkathayam Tarwad obtained a decree which made defendants 1 and 2 (two junior members of his Tarwad) and defendants 3 and 4 (strangers) liable for the costs of the litigation. He died soon after the decree and on his death, 1st defendant succeeded to the Karanavasthanam and was impleaded as plaintiff's representative. He applied to execute the decree for costs against defendants 2 to 4. The lower Court dismissed the application holding that the decree for costs being a joint decree for money against the 1st defendant and other defendants, the 1st defendant could not, in his capacity as transferee of the rights of the plaintiff by operation of law, execute the decree under Section 225, Clause (*b*), Civil Procedure Code.

*Held.*—As the 1st defendant succeeded to the Karanavasthanam not as the representative of the decree-holder, but as the representative of the Tarwad to which he belonged and as his position was not that of an assignee of the deceased 1st plaintiff by operation of law, but as the representative of the Tarwad, Section 225, Clause (*b*), was not applicable to the case. The position of the late decree-holder being in no way a personal one but as the agent, so to speak, of the corporate body to which he belonged and as that body still existed, the Tarwad was entitled to execute its decree by its lawful representative, the Karanavan.—

**30 T. L. R.,** *86*
**(=4 T. L. J.,** *236*).

**28.** Whatever may be the rights of the manager or the other members of a joint Hindu family to deal with co-parcenary property, the property in decree is a peculiar kind of property and is governed solely by the provisions of the Civil Procedure Code; and, therefore, a decree cannot be assigned by any one except by the person who appears on the record as the person in whose favour the decree has been made or by some person whom the Court has by order recognised as the decree-holder from the original plaintiff or his representative.

Members of a joint Hindu family cannot be regarded as representing each other even during their life-time, so as to make

each competent to validly assign decrees made in favour of any other.

An assignment of a decree made by unauthorised persons cannot be subsequently ratified by the decree-holder, when the same has not been made for and on behalf of the latter, especially when the ratification will prejudice creditors who have attached the decree before the ratification.—

**6 T. L. J., *197.***

**29.** The plaintiff assigned all his properties to another including his interest in a suit instituted by him. The assignee did not apply to be impleaded in the suit and the decree mentioned only the plaintiff's name as decree-holder; but in a petition put in by the plaintiff and the assignee jointly, the plaintiff admitted that the assignee might be placed on the record in his place, since he had parted with all his rights in the decree. The joint petition also prayed that the assignee may be allowed to execute the decree.

*Held*,—By virtue of the admission of the decree-holder, the assignee had become a transferee by operation of law within the meaning of Section 225 of the C. P. C., and as such was entitled to execute the decree.

*Per Palpu Pillai, J.*—The words of Section 225 C. P. C. relating to a transfer of a decree cannot be construed so as to apply to a case where there was no decree in existence at the time of the agreement. The words 'decree-holder' must be construed as meaning decree-holder in fact and not as including a party who, in equity, may afterwards become entitled to the rights of the actual decree-holder.—**36 T. L. R., *1.***

**30.** K, the holder of a redemption decree, died without executing it. Subsequently, there was a partition in the Tarwad of K under which the property comprised in the decree fell to the share of N. N then sold the property to P directing the latter to get herself brought on the record as the representative of the deceased decree-holder and execute the decree. P thereupon applied to execute the decree. The judgment-debtor resisted the application on the ground, among others, that the applicant's transferor had not been recognised by the executing Court.

*Held*,—The application for execution of the decree was competent. The transfer of a decree by an unrecognised transferee is recognised by the Court as passing good title.

*Per Palpu Pillai, J.*—The word "decree-holder" is wide enough to include any person to whom a decree is transferred either by assignment in writing or by operation of law.

*Per Raman Tampi, J.*—The Code of Civil Procedure has no provision which imperatively requires that the transferee of a decree shall, before himself assigning it, apply to the Court for recognition of his status. Section 225 merely contains an enabling provision regarding applications for execution of decrees.— **11 T. L. J., *65.***

Ref.—15 T. L. J., 379.
Fol.—16 T. L. J., 264.
Dist.—18 T. L. J., 1216.

**31.** It is well established that the assignee of an appealable decree is affected by an adverse decision passed against the assignor affecting the decree assigned.

It would not follow from the above principle that a decision in favour of the assignor by the appellate Court would have the effect of enlarging the rights of the assignee, if all that was assgined was the limited interest of the assignor under the decree, that is the subject of the appeal. The assignee's rights under the assignment are affected by an adverse appellate decision against his assignor affecting the portion of the decree that is assigned, because the assignment is of a fluctuating interest which is finally determined only by the appellate decree, and because that decree has the

effect of destroying in whole or in part the subject-matter of the assignment and not because that decision purports to construe the deed of assignment as one passing only the interest as fixed by the appellate decree. The adjudication by the Appellate Court in such a case is one between the assignor and assignee on the one hand and the judgment-debtor on the other; and as the Appellate Court finally determines the rights of the one and the liabilities of the other, the assignment attaches itself to them and ceases to be operative so far as it is in excess of them. But the case is different where the effect of the appellate decree is to enlarge the right of the assignor under the decree that has been assigned. In such a case, the question is one relating to the scope of the assignment as between the assignor and the assignee, which must be determined not by the extent of the rights and liabilities fixed by the appellate decree, but by the terms of the deed of the assignment itself. There is no reason why the rights of the assignee should be enlarged by the decree on appeal. A claim like this cannot be upheld upon a mere fanciful analogy to the principle of reciprocity.

The argument founded on the integrity and finality of the decree of the Court of appeal has also no force, as it is well established that there could be a transfer of a portion of a decree.

Under the general law, the assignment of a fund carrying interest would carry with it also the right to the interest accruing therefrom after the date of such transfer unless such rights are expressly reserved. Therefore, the assignee is entitled to interest after date of assignment.—

**15 T. L. J., *312*.**

**32.** When the assignee of a decree applies for recognition of the assignment, it is open to the judgment-debtor to object on the ground that he has discharged the decree-debt to the assignor, although such discharge has not been certified to the Court.— **15 T. L. J., *379*.**

**33.** Though Section 225, C. P. C., contains only an enabling provision regarding applications for execution of decrees, there is no provision in the Code which imperatively requires the transferee to get his rights recognised by the execution Court before he acts as such.

It is open to a judgment-debtor to object to the execution on the ground that the assignment is but a *benami* transaction to benefit another judgment-debtor.

A defendant who is interested in the plaint property as a subsequent encumbrancer has to be deemed to be judgment-debtor within the meaning of Section 225. The judgment directing the properties to be proceeded against for the amount specified therein would be one passed against him and therefore making him a judgment-debtor as defined in Section 2 of the Code.—

**16 T. L. J., *264*.**

**34.** The plaintiff obtained a decree against the first defendant (mortgagor) on the strength of a mortgage and lease. The second defendant is the puisne mortgagee. In execution, an assignment of the decree was obtained in the name of the first defendant's son, and the assignee applied for recognition of the assignment of the decree. The second defendant objected on the ground that the assignment was *benami* for the first defendant and that it was taken with the fraudulent object of rendering it impossible for the second defendant to recover his debt and that it should not be recognised.

*Held*,—The spirit of Section 225 is that one judgment-debtor should not by acquiring the interest of a decree-holder be allowed to put himself into a position in which he can force the other judgment-debtors to pay the whole of the decree amount when his proper remedy is a suit for contribution; and for this purpose it does not matter whether the assignee-decree-holder is one against whom a personal decree was passed

or one who has been directed to pay the decree-amount out of the proceeds of the property in his hands.—**42 T. L. R.,** *356* (=**18 T. L. J.,** *85*).

Ref.—19 T. L. J., 1113.

**35.** An application for recognition of assignment of decree, without a prayer for actual execution, is a step in aid of execution.

The provisions of Section 225 make it clear that the transferee becomes a decree-holder for the purposes of execution not by force of the assignment alone but by the added force of a recognition of the assignment by the Court.

*Quaere.*—Whether a prayer in an application for execution for executing the decree against the judgment-debtor will keep the decree alive against the surety also.—**18 T. L. J.,** *916.*

Doubted.—19 T. L. J., 1113.

**36.** So long as the transferee does not seek execution of the decree or the Court refuses to recognise the assignment, the parties to the decree are bound by the terms of the decree itself. The execution Court has no power to go behind the decree or to enter into questions beyond the scope of the decree. In such cases, the execution Court is bound to give effect to the decree as it stands on record and allow the decree-holder to execute it.—**18 T. L. J.,** *1216.*

**37.** Orders passed under Order XXI, Rule 14, though not appealable under Order XLII, Rule 1, fall under Section 40 and are appealable. The matter in controversy is clearly one between the parties to the decree. The order would constitute a decree as defined in Section 2 (2), and an appeal would lie from a decree in the absence of any provision to the contrary, under Section 76, Clause (1).— **19 T. L. J.,** *439.*

**38.** Under Order XXI, Rule 14, an assignee in writing of the rights under a decree can apply for execution of the decree to the Court which passed it, execution having to be allowed thereon as if the original decree-holder himself had applied for the same. The use of the expressions "assignee" and "transferee" would indicate that even mortgage decrees would be transfers of decrees within the purview of the provision.

The assignment should clearly relate to the decree and the transfer must be in writing. A transferee from one of the joint decree-holders can validly apply for execution. An application by him would take effect in favour of all. If he gives up the remaining portion of the decree and execution is allowed to proceed with the other decree-holders on record, it may operate as a bar for execution with respect to the balance.

The Rule would only imply that, in case of transfers, an application for execution alone is contemplated thereunder. There is no necessity for a formal order recognising the assignment. A transferee cannot apply for the mere recognition of his right to execute his decree without asking for execution. But where an application has been made for this purpose alone and allowed, this is a step-in-aid of execution for keeping the decree alive.

Notice as provided in the Rule is imperative in such cases.

The notice contemplated under the Rule is one of *application for execution* and *not of the assignment.* What is, therefore, required under the Rule is that the application should be for execution with the assignee on record, and it is incumbent on the execution Court to issue notice of such application to the decree-holder and judgment-debtors and hear their objections, if any.

Decrees based on simple mortgages or hypothecation deeds are those for payment of money under Proviso 2 to the Rule,

Procedure on receiving application for execution of decree.

**15.** (1) On receving an application for the execution of a deecree as provided by Rule 9, Sub-rule (2), the Court shall ascertain whether such of the requirements of Rules 9 to 12 as may be applicable to the case have been complied with; and, if they have not been complied with, the Court may reject the application, or may allow the defect to be remedied then and there or within a time to be fixed by it.

(2) Where an application is amended under the provisions of Sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.

(3) Every amendment made under this Rule shall be signed or initialled by the Judge.

(4) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application:

Provided that, in the case of a decree for the payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.

---

It is however essential that there should be a specific direction for payment by the defendants jointly.

The objections under Proviso 1 are wider. They are intended to cover infirmative circumstances which on general principles would not justify the execution of a decree by the assignee being allowed. It is only in cases where, owing to fraud or other infirmative circumstances, which would invalidate the transaction as a whole or where the contract cannot be taken to have been a completed one or to have binding effect in the eye of the law that execution could be refused in the above Proviso: whether objections raised in a case would be admissible under this Proviso will have to be determined in the light of the principles set forth above.

Absence of consideration for assignment would not be a ground under the Proviso, if assignment is not a sham.

Where the understanding between assignor and assignee was that a recognition of the transfer should be procured to mislead third parties, the Court should refuse to aid the party guilty of participation in the fraud.

The fact that an attachment is subsisting would not *per se* render the assignment invalid.

Even if assignee is benamidar, his application for execution could not be refused.

*Quaere.*—Whether a true owner can apply for execution in the case of assignments, as to which there is a conflict of opinion.

*Quaere.*—Whether the second Proviso can come into operation where an assignee-decree-holder was one who had been directed to pay the decree amount out of the proceeds of property in his hands.—
**19 T. L. J.,** *1113.*

**39.** See also—
Or. XXII, r. 10.— **19 T. L. J.,** *5.*
**19 T. L. J.,** *428.*

**Or. XXI, r. 15** [= S. 239 = *Or. XXI, r. 17*]

The corresponding Section of the old Regulation was as follows:—

"239. *Procedure on receiving application for execution of decree.*—The Court, on receiving an application for the execution of a decree, shall ascertain whether such of the requirements of Sections 228, 229, 230 and 231 as may be applicable to the case have been complied with; and if they have not been complied with, the Court may reject the application, or may allow it to be amended then and there, or within a time fixed by the Court. If the application be not so amended, it shall be rejected.

Every amendment made under this Section shall be attested by the signatures of the Judge and of the applicant or his vakil.

*Procedure on admitting application.*—When the application is admitted, the Court shall enter in the register of the suit a note of the application and the date on which it was made, and shall order execution of the decree according to the nature of the application:

Provided that, in the case of a decree for money, the value of the property attached shall, as nearly as may be, correspond with the amount for which the decree has been made."

**Case Law.**

**1.** Where a decree allows satisfaction of the debt from the immovable property of the judgment-debtor and also from the judgment-debtor personally and contains no condition that execution shall be first had against the property and there is no question of fraud being perpetrated on the judgment-debtor, there is no principle or equity which prevents the decree-holder from enforcing his decree against the judgment-debtor's person or property whichever he may think best.— **16 T. L. R.,** *117.*

Ref.—3 T. L. J., 120.
Fol.—43 T. L. R., 136
(=18 T. L. J., 326).

**2.** The holder of a hypothecation decree has the right of proceeding against either the person of the judgment-debtor or the properties mentioned in the decree as he chooses, in the absence of any direction in the decree that the hypothecated properties should be sold first.— **26 T. L. R.,** *238.*

Ref.—3 T. L. J., 120.
43 T. L. R., 136
(= 18 T. L. J., 326).

**3.** The plaintiff obtained a decree to recover a certain sum of money from the debtor, first defendant, and two sets of properties. The first defendant had conveyed his rights in one set of properties to the second defendant, and the other set to the third defendant. The decree-holder applied to sell one set of properties. On objection by first defendant, the Court executing the decree ordered that the decree-debt should be rateably divided between the two sets, and that the decree-holder should sell each of the sets for the amount thus found due.

*Held.*—The order of the lower Court was one virtually superseding the decree which made all the properties jointly and severally liable for the decree-debt; and the decree-holder is competent to execute his decree against the properties in any order he may choose.— **3 T. L. J.,** *120.*

Ref.—43 T. L. R., 136
(=18 T. L. J., 326).

Execution in case of cross-decrees.

16. (1) Where applications are made to a Court for the execution of cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such Court, then—

(*a*) if the two sums are equal, satisfaction shall be entered upon both decrees; and

(*b*) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

(2) This Rule shall be deemed to apply where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

(3) This Rule shall not be deemed to apply unless—

(*a*) the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits; and

(*b*) the sums due under the decrees are definite.

(4) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons.

---

4. Omission to file a copy of the decree sought to be executed along with the execution application is at most only an irregularity and is not fatal to the validity of the application.— 10 T. L. J., *125.*

Fol.—43 T. L. R., 161 (= 18 T. L. J., 1).

Or. XXI, r. 16 [= S. 242 = *Or. XXI, r. 18*]

1. The corresponding Section of the old Regulation was as follows:—

"242. *Cross-decrees.*— If cross-decrees between the same parties for the payment of money be produced to the Court, execution shall be taken out only by the party who holds a decree for the larger sum, and

### *Illustrations.*

(a) A holds a decree against B for Rs. 1,000. B holds a decree against A for the payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this Rule.

(b) A and B, co-plaintiffs, obtain a decree for Rs. 1,000 against C, and C obtains a decree for Rs. 1,000 against B. C cannot treat his decree as a cross-decree under this Rule.

(c) A obtains a decree against B for Rs. 1,000 C, who is a trustee for B, obtains a decree on behalf of B against A for Rs. 1,000. B cannot treat C's decree as a cross-decree under this Rule.

(d) A, B, C, D and E are jointly and severally liable for Rs. 1,000 under a decree obtained by F. A obtains a decree for Rs. 100 against F singly and applies for execution to the Court in which the joint-decree is being executed. F may treat his joint-decree as a cross-decree under this Rule.

---

for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

If the two sums be equal, satisfaction shall be entered upon both decrees.

*Explanation I.*—The decrees contemplated by this Section are decrees capable of execution at the same time and by the same Court.

*Explanation II.*—This Section applies where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

*Explanation III.*—This Section does not apply unless the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other, and each party fills the same character in both suits; and the sums due under the decrees are definite.

*Explanation IV.*—It is the duty of the Court to enter satisfaction under this Section."

[The three Illustrations which followed this Section are the same as the first three Illustrations in the present Rule.]

II. In regard to Sub-Rule (4) and Illustration (d), the Indian Special Committee say :—"This addendum has been introduced in accordance with the views of the Calcutta and Allahabad High Courts as expressed in the cases of Hury Doyal Guho *V.* Din Doyal Guho (I. L. R., 9 Cal., 479) and Ram Sukh Dass *V.* Toba Ram (I. L. R., 14 All., 339)."

#### Case Law.

1. A obtained a decree against B. B had also obtained a decree against A. The decree obtained by A was for a larger amount. C obtained a decree against B and attached the decree-debt due to B from A. C then applied to get himself impleaded as the decree-holder in the attached decree and to execute it. Notice was issued to A to show cause why the decree should not be executed after impleading C as the decree-holder. No objections having been received, the Court on 7-5-1098 passed an order :—"Attaching decree-holder is allowed to execute the decree." Notice was again issued to A to show cause why the decree should not be

executed against him. A thereupon produced the decree he had obtained against B in Court and objected to the execution of the decree obtained by B against him praying for satisfaction being entered for the smaller decree.

*Held* (accepting the objection of A). - (1) The order of 7-5-1098 allowing execution did not operate as *res judicata*. The notice issued to A before that order was passed could be taken to have been issued only for the statement of objections, if any, to the impleading of the attaching creditor as the decree-holder. The issue of a second notice to A calling upon him to show cause why the decree should not be executed against him clearly supported that view.

(2) The cross-decree could be set off against the attaching creditor under Section 242, C. P. C.

(3) The pendency of an execution application relating to the decree obtained by A against B was not a necessary condition for allowing the set-off provided for by the Section. The Section contemplated only the production of the decree before the Court.

*Per Venkitarama Aiyar, J.*—The expression "produce" occurring in Section 242 has to be given a more liberal interpretation and not restricted to production by means of an application for execution. Rule 15 of the Civil Courts' Guide lays down the procedure to be adopted as regards the presentation of documents, &c., in Court. As such, if the decree has been produced or presented in Court in the manner prescribed by this Rule, the conditions laid down by Section 242 for claiming the benefit of its provisions should be taken to have been satisfied fully.

One of the elementary canons of intepretation of statutes is that "the grammatical and ordinary sense of the words is to be adverted to, unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the statute in which case the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity, repugnance or inconsistency, but no further.

*Prima facie*, the same words used in different parts of a statute should be given the same meaning.— **17 T. L. J.,** *276.*

Ref.—18 T. L. J., 880.

**2.** The essential pre-requisites for the applicability of Section 242 are :—(1) There must be more than one decree. (2) The decrees must be between the same parties. (3) One must be for a larger sum and the other for a smaller sum (if both the decrees are for the same amount satisfaction must be entered on them both). (4) The decrees must be produced in Court.

The expression "produce" in this Section has to be construed in its ordinary sense, no particular form of production being liable to be insisted upon for the purpose. If at all, the provisions of Chapter X of the Code (1065) relating to the production of documents and the standing orders issued by the High Court alone should govern such production.

Where no judicial order disposing of the execution application for the larger sum which was subject to the injunction had been passed, the decree-holder thereto has the right to the benefit of Section 242, C. P. C.— **18 T. L. J.,** *816.*

Fol.—19 T. L. J., 1071.

**3.** In order that Order XXI, Rule 16, may be applied, the following essentials must be satisfied :—(1) The parties to the two decrees must fill the same character. (2) Applications for execution in both decrees must be pending. (3) Decrees in both the cases must be executable on the date of the application.

The expression "the same character," in this Rule, has the same import as that in Order VIII, Rule 8, relating to set-off. It

17. Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then,—

Execution in case of cross-claims under same decree.

(a) if the two sums are equal, satisfaction for both shall be entered upon the decree ; and

(b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.

---

should be taken to be synonymous with capacity.

Parties cannot be said to fill the same character when in one suit they figure in their individual capacity, while in the other, they come in as trustee, manager or on behalf of their Tarwads.—

**18 T. L. J.,** *1001.*

**Or. XXI, r. 17** [ = S. 243 = *Or. XXI, r. 19*]

I. 1. The corresponding Section of Regulation II of 1065 was as follows :—

"243. *Cross-claims under the same decree.*—When two parties are entitled under the same decree to recover from each other sums of different amounts, the party entitled to the smaller sum shall not take out execution against the other party; but satisfaction for the smaller sum shall be entered on the decree, and execution shall be taken out for the balance only, by the party entitled to the larger sum.

When the amounts are equal, neither party shall take out execution, but satisfaction for each sum shall be entered on the decree."

2. The 1882 Indian Code did not contain, in Sections 246 and 247, corresponding to Sections, 242 and 243 of the Regulations, Explanation IV found in Section 242 and the words "and execution shall be taken out......to the larger sum" found in the first para of Section 243. These additions were made "to avoid various doubts which have been felt as to the effect of cross claims for different sums. Under the Sections, as thus amended, it is the duty of the Court to enter satisfaction and to issue process of execution for the balance at the instance of the party entitled to the larger sum."—

*S. O & R., Para 36.*

**Case Law.**

1. In a suit for redemption by the mortgagor, the plaintiff obtained a decree for redemption on payment of the mortgage amount, and the value of improvements to the mortgagee (defendant). The mortgagee sought to execute the decree awarding the mortgage amount and the value of improvements. The District Judge refused to proceed with the execution, on the ground that the mortgagee-defendant was not a decree-holder within the meaning of Section 223 C. P. C. [=Or. XXI, r. 8] under which it is the holder of a decree who should apply for its execution.

It was contended before the High Court on appeal that, as under the decree, the amount of mortgage and compensation of improvements were to be paid by

the plaintiff to the defendant, while the latter had to pay to the former the costs of the suit, the case fell within the purview of Section 243.

*Held.*—In order to make Section 243 applicable the parties entitled under one decree to recover from each other, must hold the same character and possess identical rights of enforcing execution. In the case, the defendant's right to receive the mortgage amount and value of improvements is a contingent one and not absolute, and he could not claim these moneys until the mortgagor or his representative in interest seeks out execution of the decree for redemption. The decree in the case as drawn up, contained no order for unconditional payment of money by the plaintiff to the defendant, or for sale of the property in satisfaction of the mortgagee's claim. In fact, no such relief had been sought by the mortgagee-defendant, and the decree simply granted the relief claimed by the plaintiff.— **15 T. L. R.,** ***11.***
**1 S. D.,** ***185.***

Ref.—2 S. D., 98.
19 T. L. J., 519.

**2.** Plaintiff claimed the right to set off the amount of costs payable to him under the decree against the mortgage amount payable by him.

*Held.*—No claim for set-off arose under Section 243. The decree could not be regarded as a decree under which two parties are entitled to recover from each other sums of different amounts. The rule in Section 243 is based on the same principle as that in Section 242 [ = Or. XXI, r. 16 ]; but while the latter Section relates to several decrees, the former relates to cases where there is only one decree providing for counter-claims. It is obvious, upon the language of Section 243, that the single decree must be of such a nature that each of the two parties can, except for the prohibition contained in the rule, take out execution against the other for the amount due to him. Section 243 relates to a decree dealing with counter-claims for money, while Section 242 relates to cross decrees. Section 243 does not apply to the facts of the case.— **11 T. L. J.,** ***398.***

Ref.—19 T. L. J., 459.
19 T. L. J., 519.

**3.** A decree for redemption of a mortgage directed the decree-holder to deposit in Court a specified amount and recover the property from defendants 1 to 4. The amount to be deposited was to be drawn by defendants 1 to 4 on production of a written consent from 5th defendant the hypothecatee. The decree-holder was to recover his costs from defendants 1 to 4.

*Held.*—The decree-holder was competent to set off his costs against the amount required to be deposited by him. The fact that a written consent was made a pre-requisite under the decree for the withdrawal of the deposit amount by defendants 1 to 4 did not *per se* stand in the way of the decree-holder claiming the benefit of Section 243, C. P. C.— **16 T. L. J.,** ***403.***

**4.** In a suit by reversioners to set aside alienations by a widow and to recover possession of the properties from the alienees, a decree was passed setting aside alienations and allowed the plaintiffs to recover the properties from the alienees. As regards the 15th defendant, an alienee in the case, the decree was that the plaintiffs should recover the property in his possession on payment of 5,000 Fs. and that 15th defendant should pay 600 Fs. costs to the plaintiffs. The plaintiffs applied for execution of the decree, but deposited only 4,304 Fs. instead of 5,000 Fs., the balance 696 Fs. being set off against costs from 15th defendant with interest thereon from date of deposit. The 15th defendant objected to the delivery of the property on the ground that the plaintiffs were not entitled to set off the costs. The lower Court overruled the objection and allowed execution. On appeal:

*Held.*—The plaintiffs could not be allowed to make the set off.

18. The provisions contained in Rules 16 and 17 shall apply to decrees for sale in enforcement of a mortgage or charge.

Cross-decrees and cross-claims in mortgage-suits.

The only two provisions of the Civil Procedure Code bearing on set-off are Order XXI, Rule 17 and Order XX, Rule 6. The first of these applies to cases where the decree is for the payment of some money by each party to the other. The provision can only apply to cases where each party is entitled to execute the decree in his favour. This condition is not satisfied in the case as the defendant cannot execute the decree for payment of 5,000 Rs. to him.

Order XX, Rule 6, vests a discretion in certain cases to make a specific direction to set off the costs. Where no such discretion is made by the Court, the set-off cannot be allowed.

It has been held in British India that the only principle on which set-off in execution can be allowed independently of the provisions of the Civil Procedure Code, is that Courts may allow it on grounds of justice, equity and good conscience.

It is however doubtful whether this principle can be made applicable to execution proceedings. But even if this principle is accepted, the case is not one for its application, as the circumstances are covered by Order XX, Rule 6 (3).—

**19 T. L. J.,** *459.*

**5.** In order that Order XXI, Rule 17, might apply, there must be a decree in favour of the defendant which is executable by him against the plaintiff. A decree for recovery of property on condition of the plaintiff depositing the value of improvements cannot be said to be such a decree in favour of the defendant which he can execute.

"Order XXI, Rule 19, (British Code), applies, however, to cases where an application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other. A vendee against whom a decree for pre-emption has been obtained subject to the payment of the purchase-money within a certain time is not a person entitled to recover that purchase money from the plaintiff. It is open to the plaintiff to pay that money if he chooses to enforce his pre-emptive right within the time allowed by the decree or withhold payment and allow the decree to lapse. If he adopts the latter course, the defendant-vendee cannot compel him to make the payment or seek to recover the purchase money by an application for execution. He may be able to recover the costs, if any, awarded to him against the plaintiff, but he cannot compel the plaintiff to take advantage of his pre-emptive right." (74 I. C. 553).—

**19 T. L. J.,** *519.*

**6.** See also—

Or. XX, r. 6.—**10 T. L. J.,** *91.*

---

**Or. XXI, r. 18** [ = ,, = *Or. XXI, r. 20* ]

**I.** This Rule is the same as the Rule in the British Indian Code. The latter was inserted by the Indian Select Committee "in order to make it clear that the provisions as to cross-decrees and cross-claims apply to the case of mortgage-decrees. The Rule also makes it clear that the expression 'decree for the payment of money' and other similar expressions in the Code do not include a decree for sale in enforcement of a mortgage or charge."—***India Gazette dated 15-2-1908, Pt. V.***

Simultaneous execution.

19. The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor.

Notice to show cause against execution in certain cases.

20. (1) Where an application for execution is made—

(*a*) more than one year after the date of the decree, or

(*b*) against the legal representative of a party to the decree,

the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him :

Provided that no such notice shall be necessary in consequence of more than one year having elapsed between the date of the decree and the application for execution if the application is made within one year from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

---

**Or. XXI, r. 19** [ = S. 223, Para 2
= *Or. XXI, r. 21*]

For the other Paragraphs of the old Section 223, see Section 41 and Rule 8 of this Order.

**Case Law.**

**1.** A decree-holder applied for issue of warrant and attachment of property. On this application, the Court's order granted the attachment, but was silent as to warrant of arrest. A claim by a third party followed the attachment, and subsequently further proceedings in connection with the attached properties were stopped. More than four years after the disposal of the application for arrest, the decree-holder renewed his application for arrest.

*Held.*—When the prayer for attachment was granted and that for arrest not, the natural presumption, in the absence of anything to the contrary, was that the latter prayer was refused. The subsequent application for arrest was consequently barred by time — **15 T. L. R.**, *9.*

Dist.—7 T. L. J., 131.
Ref.—2 S. D., 46.

**2.** See also—
Under Sec. 41 and
Sec. 47.— **17 T. L. J.**, *455.*

(2) Nothing in the foregoing Sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

---

Or. XXI, r. 20 (1) [= S. 244 = *Or. XXI, r. 22* (1)]
" r. 20 (2) [= " = *Or. XXI, r. 22* (2)]

I. 1. *Sub-Rule (1).*—In the Proviso, the words "of any decree passed on appeal from the decree sought to be executed or" which occurred after the words "within one year from the date" in the corresponding Proviso of the old Section 244 have been omitted.

2. The Indian Special Committee observe :—

"The Committee have omitted the reference to a decree passed on appeal, for that is ordinarily the decree to be executed. [Kristo Kinkur Roy *V.* Rajah Burrodacaunt Roy (14 Moo. I. A., 465) and Muhammad Sulaiman Khan *V.* Muhammad Yar Khan (I. L. R., 11 All., 267) ]."

II. For Form of Notice to show cause why execution should not issue, see Appendix E, Form No. 7.

**Case Law.**

1. If the notice to show cause against the execution of the decree was not legally served on the defendant, his remedy would be to get the order of the execution Court reviewed on that ground and not to raise it in a fresh suit (F. B.).— **10 T. L. J.,** *387.*

2. The decree-holder presented an application for execution of the decree against the judgment-debtor's legal representatives on the 26th Dhanu 1093 and also prayed by his execution application for the issue of notice to them. Notice was issued, and ultimately, after proclamation of sale, the 5th Vrischigom 1094 was fixed as the date for the sale in Court. On that date the legal representatives appeared in Court and objected to the sale taking place on the allegation that no notice in terms of Section 244, Clause (*b*), of the C. P. C., had been served upon them, and that consequently, the order for sale was null and void. On the 12th Vrischigom 1094, the decree-holder presented an application for the issue of notice in the terms of Section 244; but the Munsiff held that an application for the issue of such notice should be made by the presentation of a fresh execution form; and on the same day he summarily rejected the execution application of the 26th Dhanu 1093. On appeal, the District Judge set aside the order of the Munsiff. On second appeal by the legal representatives of the judgment-debtor :

*Held.*—A notice under Section 244 is necessary in order that the Court should obtain jurisdiction to sell property by way of execution as against the legal representative of the deceased judgment-debtor. The language of the Section makes it clear that it is the duty of the Court to issue the necessary notice under that Section when the judgment-creditor has asked for the execution of the decree against the legal representatives of the deceased judgment-debtor.

In the case, the judgment-creditor by his execution application of the 26th Dhanu 1093 asked for execution against the judgment-debtor's representatives and also prayed for the issue of notice to them. There was nothing further that he had to do in the matter of his application, and if the Court did not issue a notice in the terms of Section 244, the judgment-creditor was not to blame. The maxim of the law is *actuo curiae neminem gravabit*. When he was apprized of the defect in the notice, he at once moved the Court for the issue of a

**21.** (1) Where the person to whom notice is issued under the last preceding Rule does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

Procedure after issue of notice.

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit.

---

notice in due form; nevertheless the execution Court would not do what it was already bound to have done under the law. It seems difficult, in these circumstances, to hold that the judgment-creditor could be made to suffer.

"Procedure is but the machinery of the law after all—the channel and means whereby law is administered and justice reached. It strangely departs from its proper office when, in place of facilitating, it is permitted to obstruct and even extinguish legal rights, and is thus made to *govern* where it ought to *subserve*." Courts should look to the essential justice of the case without considering whether matters of form have been strictly attended to.

The representatives of the deceased judgment-debtor having already appeared and contested the decree-holder's right to execute the decree, no fresh notice need issue to them. Execution should be proceeded with in due course of law after hearing the representatives in answer, as if notice under Section 244 had been served on them.—

**37 T. L. R.**, *274*
(= **12 T. L. J.**, *301*).

Ref.—19 T. L. J., 1113.

**3.** In the course of execution of a decree for money, two items of property belonging to one of the defendants (who had died since the passing of the decree) having been sold in court-auction, his widow applied to the Court for the cancellation of the sale. The Court set aside the sale on the ground, among others, that, before impleading the legal representative of the deceased 5th defendant, judgment-debtor, a notice under Section 244 had not been issued to the persons sought to be impleaded. On appeal by the heir of the 14th defendant (auction-purchaser of one of the items):

*Held.*—The omission to issue a notice under Section 244 was sufficient to make the subsequent proceedings in execution void and of no effect.— **38 T. L. R.**, *318*
(= **12 T. L. J.**, *314*).

Ref.—19 T. L. J., 1113.

**4.** Civil Circular No. 13 of 1060 read with Civil Circular No. 10 of 1070, Paragraph (4), would indicate that a specific order for the payment of the process fee is necessary to enable the Court to strike off the exection application for default for non-payment of the same within eight days of that date. With respect to sales of immovable properties, Civil Circular No. 69 of 1075 requires affidavits and encumbrance certificates to be filed along with the proclamation schedule to enable the Court to settle the same. In a case where the issue of notice under Section 244 is applied for, preliminary to other steps in execution, a specific order requiring the party to file the proclamation schedule along with the necessary enclosures is essential before proceeding to dispose of the same. Even if the application containing the prayer for sale is found defective, the same should be returned or the additional statements or papers required to be produced within a time fixed by the Court. In the absence of such a

*Process for execution.*

Process for execution.

**22.** (1) When the preliminary measures (if any) required by the foregoing Rules have been taken, the Court shall, unless it sees cause to the contrary, issue its process for the execution of the decree.

(2) Every such process shall bear date the day on which it is issued, and shall be signed by the Judge or such officer as the Court may appoint in this behalf, and shall be sealed with the seal of the Court and delivered to the proper officer to be executed.

(3) In every such process a day shall be specified on or before which it shall be executed.

---

judicial order, the dismissal of the execution application cannot be held to be a judicial disposal of the application.—

**19 T. L. J.,** *524.*

**Or. XXI, r. 21** [= S. 245 =*O*[illegible]*XI, r. 23*]

The first Paragraph of the old Section 245 corresponding to Sub-Rule (1) had the words "unless its execution is barred by limitation" after the words "to be executed", at the end. These have been omitted.

**Or. XXI, r. 22** (1) [= S. 246 =*Or. XXI, r. 24* (*1*)]

,, **r. 22** (2) & (3) [= S. 247 =*Or. XXI, r. 24* (*2*) *&* (*3*)]

I. The corresponding Sections of the old Regulation were as follow :—

"246. *Warrant when to issue.*—When the preliminary measures (if any) required by the foregcing provisions have been taken, the Court, unless it sees cause to the contrary, shall, subject to the provisions of Sections 240 and 241 issue its warrant for the execution of the decree."

"247. *Date, signature, seal and delivery.*—Such warrant shall be dated the day on which it is issued, signed by the Judge, or such officer as the Court appoints in this behalf, sealed with the seal of the Court and delivered to the proper officer to be executed.

And a day shall be specified in such warrant on or before which it must be executed, and the proper officer shall endorse thereon the day and manner in which it was executed, or, if it was not executed, the reason why it was not executed, and shall return it with such endorsement to the Court from which it issued."

II. For the word "warrant" in the old Sections, the word "process" has been substituted "as being more exhaustive and familiar".— ***India Gazette dated 21-3-1903, Pt. VI.***

**Case Law.**

**1.** No Court is ordinarily competent to execute its process outside the limits of its local jurisdiction, and the only way in which it could invoke the assistance of the Court competent to execute the process, is by transferring the execution of the decree itself to such latter Court (F. B.).—

**6 T. L. R. App., 3.**

**2.** An application for execution of a decree was made more than three years after the last application for the same, but within three years from the date of the order for

Endorsement on process.

23. (1) The officer entrusted with the execution of the process shall endorse thereon the day on, and the manner, in which it was executed, and, if the latest day specified in the process for the return thereof has been exceeded, the reason of the delay, or, if it was not executed, the reason why it was not executed, and shall return the process with such endorsement to the Court.

(2) Where the endorsement is to the effect that such officer is unable to execute the process, the Court shall examine him touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

---

warrant passed upon the last application. Notice was issued to the defendant to show cause why the application should not be granted. No objection having been taken by the defendant, his property was attached, though not sold in consequence of claims preferred by third parties. More than a year after the execution of the warrant of attachment, the defendant filed an objection that the decree was barred at the time of the last application for execution.

*Held*.—The plea of bar was too late. The defendant not having appealed against the order for attachment, it has become final and the said order whether right or wrong determined that the decree was not barred. The proper time for raising the objection was when notice of the application was issued to the defendant.—

**8 T. L. R. App.**, *41.*

**3.** Where the Court had ordered a process for execution of a decree to issue on an application by the decree-holder, the legal presumption is that the decree was not barred at the date of the order, as it is always the duty of the Courts to ascertain whether execution is barred, before passing such an order. The debtor's silence as to limitation only strengthens this presumption.—

**8 T. L. R. App.**, *55.*

**4.** The omission to affix the Court seal to a warrant for the arrest of a judgment-debtor renders the warrant void, and the arrest of the judgment-debtor under an unsealed warrant being consequently illegal, resistance to such arrest is justifiable on the ground of self-defence, and is therefore not punishable.— **4 T. L. J.**, *71.*

**5.** On an application for execution of a decree presented by the assignee-decree-holder, the Court on 16-8-1091 ordered notice to issue to the other side to show cause why the assignment of the decree should not be recognised. On the 19th of that month, the Court took up the application and passed the order striking it off.

*Held*.—The order could not be treated as one due to the default of the applicant, for, under Civil Circular No. 13 of 1060, he had eight days' time to pay the process fees and the order was passed within three days. It could not, therefore, be treated as an order judicially and finally disposing of the application.— **17 T. L. J.**, *926.*

**6.** See also—

Sec. 41.—**17 T. L. J.**, *774.*

---

**Or. XXI, r. 23** [= S. 333 = *Or. XXI, r. 25*]

I. From the comparative Table B appended to the Regulation, it is seen that Sub-Rule (1) corresponds to the 2nd Para of

*Stay of execution.*

When Court may stay execution.

**24.** (1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(2) Where the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application.

Power to require security from, or impose conditions upon, judgment-debtor.

(3) Before making an order to stay execution or for the restitution of property or the discharge of the judgment-debtor, the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

---

Section 247 of the old Regulation, while Sub-Rule (2) is stated as new.

A comparison, however, of the Rule with Section 333 shows that Sub-Rule (1) is a reproduction of the first Para of that Section and Sub-Rule (2) reproduces the second Para omitting the words "on oath" which occurred after the words "examine him" and adding the words "and may, if it thinks fit......record the result."

In the above circumstance, Rule 23 may be taken as corresponding to the old Section 333, and the portion of the second Para of Section 247 not incorporated in Sub-Rule (3) of the previous Rule (22) may be taken as dropped.

It may be noted that in the comparative Table A, the entry against the old Section 333 is 'omitted.'

II. As in the previous Rule, "warrant" has been replaced by "process".

Or. XXI, r. 24 (1) & (2) [=S. 233 = *Or. XXI, r. 26 (1) & (2)*]

" r. 24 (3) [= S. 234 = *Or. XXI, r. 26 (3)*]

**Case Law.**

1. A decree obtained from the Small Cause Court at Madras was transferred for execution to and was executed by the Quilon Munsiff's Court. After the money was realised in execution, the judgment-debtor filed a suit in that Munsiff's Court for refund of the same as damages and for cancellation of the Small Cause decree. It was contended for the defence that a suit of this nature was not maintainable,

Liability of judgment-debtor discharged.

**25.** No order of restitution or discharge under Rule 24 shall prevent the property or person of a judgment-debtor from being retaken in execution of the decree sent for execution.

Order of Court which passed decree or of Appellate Court to be binding upon Court applied to.

**26.** Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

Stay of execution pending suit between decree-holder and judgment-debtor.

**27.** Where a suit is pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.

---

The first Court allowed the suit, but the District Judge on appeal eventually dismissed the suit on the ground that a suit for setting aside a decree should be brought in the Court that passed the decree.

*Held.*—The District Judge was right. The policy of the law is to compel parties against whom a decree of one Court had been, at the instance of that Court, executed by another Court, to prefer their objections to the validity of the decree to the Court which passed it, and not to allow Courts of equal or inferior status to sit in judgment over one another. This policy would be defeated if the party against whom a decree is passed by one Court is to be allowed to impeach that decree by means of a fresh suit in another Court.

No claim for damages would lie, as the amount had been recovered under a subsisting decree, which not having been set aside, the debt created by it should be regarded as genuine debt.— **18 T. L. R., *14*.**

Fol.—21 T. L. R., 138.
26 T. L. R., 207
(= 2 T. L. J., 19).
29 T. L. R., 204
(= 4 T. L. J., 38).

Ref.—32 T. L. R., 168
(= 6 T. L. J., 378).
Overruled.—40 T. L. R., 194
(= 14 T. L. J., 508).

**2.** When a judgment-debtor dies after the passing of a decree and his legal representative is brought on the record in execution proceedings, an objection by such representative that the property ordered to be recovered by the decree is not held by him as representative of the deceased judgment-debtor but independently of him, is one that ought to be disposed of under Section 238, Civil Procedure Code, [new Section 40].— **28 T. L. R., *221***
**(= 3 T. L. J., *164*).**

Ref.—13 T. L. J., 349.

**Or. XXI, r. 25** [= S. 235 = *Or. XXI, r. 27*]

See Sub-section 2 of Section 50.

**Or. XXI, r. 26** [= S. 236 = *Or. XXI, r. 28*]

**Or. XXI, r. 27** [= 237 = *Or. XXI, r. 29*]

**Case Law.**

**1.** A decree-holder may at any time seek to enforce his decree, and it is only in

*Mode of execution.*

Decree for payment of money.

28. Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.

---

exceptional cases and under certain conditions, power is given to the Appellate Court or to the Court which passed the decree to stay execution thereof on the application of the judgment-debtor. **2 T. L. R.**, *95.*

2. Where one of two judgment-debtors brought a suit against the decree-holder, for money alleged to be due by the decree-holder, it was contended that Section 237 could not apply unless the new cross suit was brought by all the judgment-debtors of the former suit.

*Held.*—Section 237 was very generally worded and did not preclude one of several judgment-debtors from taking advantage of its provision if he had brought a suit formally against the decree-holder. In such a case, the Court ought to stay execution of the former decree only as against the judgment-debtor who was the plaintiff in the new suit and not against all the judgment-debtors of the former suit. It should also (unless in exceptional cases where the new suit is almost bound to be successful) put the applicant for stay of execution on terms. **4 S. D.**, *380.*

3. An application for execution of a hypothecation decree (O. S. No. 9 of 1078) by sale of the hypotheca was made on 23-7-1078, and the hypotheca was proclaimed to be sold on 26-10-1078. On 20-10-1078, an application under Section 237, C. P. C., was made in O. S. No. 59 of 1078 (a suit brought by the co-sharers of the judgment-debtor in O. S. No. 9 of 1078, praying for the stay of the sale, and on 21-10-1078, the sale was ordered to be stayed pending the disposal of the application under Section 237. On 29-10-1078 when the interim order staying the sale was in force, the application for execution, *viz.*, that dated 23-7-1078, was rejected with costs. But in finally disposing of the application dated 20-10-1078, made under Section 237, the Court on 30-10-1078 ordered that the sale should be stopped pending the disposal of O. S. No. 59 of 1078, only in respect of the shares of the plaintiffs in that suit. The decree-holder in O. S. No. 9 of 1078 revived his application for execution on 27-5-1085. The Zillah Judge threw out the application. In appeal, it was contended on behalf of the judgment-debtor that the second application, having been made more than six years after disposal of the prior application, was barred.

*Held.*—The subsequent application was only a continuation of the previous application, and therefore was not barred on the principle, that when an illegal order was set aside, the parties were necessarily restored to their former position.

An application for execution of a decree may be treated as in continuation or revival of a previous application, similar in scope and character, the consideration of which has been interrupted by the intervention of objections and claims subsequently proved to be groundless or has been suspended by reason of an injunction or like obstruction.— **2 T. L. J.**, *1.*

Dist.—42 T. L. R., 362
(=16 T. L. J., 330).

---

**Or. XXI, r. 28** [= S. 250
= *Or. XXI, r. 30*]

I. Section 250 of Regulation II of 1065 ran thus :—

"250. *Decree for money.*—Every decree or order directing a party to pay money, as compensation or costs, or as the alternative to some other relief granted by the decree or order, or otherwise, may be enforced by the imprisonment of the judgment-debtor, or by the attachment and sale of his property in manner hereinafter provided, or by both."

II. See Rule 10 of Order XX.

III. For Form of warrant of attachment of movable property in execution of a decree for money, see Appendix E, Form No. 8.

### Case Law.

**1.** (1) A decree of Court is no doubt property that can be attached under Section 263 [ new Section 52 ] of the C. P. C., and it (the decree) falls under the description of "other property" in that Section. The mode of attachment depends upon the nature of the decree sought to be attached; if it is a simple decree for money, the attachmen should be made under Section 270 [Or. XXI, r. 51]. The provisions therein contained should be strictly complied with to make the attachment complete and legally valid. If it is a decree for either immovable property or for money charged on specific immovable property, the attachment should be made according to the provisions of Section 271.

(2) A regularly perfected attachment is an essential preliminary to sales in execution of simple decrees for money, and where there has been no such attachment, any sale that may have taken place is not simply voidable but *de facto* void.—

**6 T. L. R.,** ***81.***

Ex.—20 T. L. R., 165.
20 T. L. R., 285.
[In the latter case, the 2nd dictum mentioned above was declared *obiter*.]

**2.** It is an elementary principle of law that the property attached or distressed, should be proportionate to the amount of the demand.— **6 T. L. R.,** ***90.***

**3.** The procedure to be followed by a judgment-creditor to realise the debts due to his judgment-debtor is quite different from that laid down for the attachment and sale of immovable property.

As no attachment of the debt due to the judgment-debtor (2nd defendant), was made in the manner prescribed, his debtor was at liberty to pay, and the 2nd defendant to receive, it at any time.— **6 T. L. R.,** ***119.***

**4.** So far as the judgment-debtor is concerned nothing short of the satisfaction of the decree, in execution of which the attachment was made would release the property from attachment. The Civil Procedure Code contains no provision for the release of attached property, if not brought to sale within a prescribed time.—

**7 T. L. R., App.,** ***57.***

Fol.—11 T. L. R., 13.

**5.** The attachment by Courts of property, movable or immovable, in execution of a decree simply creates a lien, and does not of itself vest the right to the property or thing attached in the attaching creditor. Something more than mere attachment is needed to vest the property or right in the thing attached in the execution-creditor (F. B.).— **10 T. L. R.,** ***128.***

Rel.—36 T. L. R., 56.

**6.** An attachment of property made in execution of a decree continued in force, under the old Limitation Regulation, until it is removed or superseded. It operates *de die in diem* as process of execution upon the decree, and at any time further process for the sale of the property might be issued upon the attachment (F. B.).

*Per Ormsby, J.*—The effect of an attachment is to render all private alienations of the property attached, whether by sale, gift or otherwise during the continuance of the attachment, void.

An attachment of immovable property once made can only be removed by the express order of the Court issuing the attachment or by sale of the attached property.— **11 T. L. R.**, *13*.

**7.** A mortgage lien is immovable property and its attachment and sale as movable property would confer no valid title on the purchaser thereof. [The Report states that the ruling in A. S. No. 194 of 1063—IX T. L. R., P. 81 has been applied to this case. This is a mistake for VI T. L. R., p. 81. The case published on page 81 of IX T. L. R., is S. A. No. 61 of 1066 and refers to the right of an assignee to sue without impleading the assignor ].— **11 T. L. R.**, *202*.

Ex.—20 T. L. R., 165.
Ref.—40 T. L. R., 252
(=14 T. L. J., 432).

**8.** The effect of attachment under the Procedure Code is seizure, or taking into judicial custody, of the property by Court. The property is, as it were, held by the Court in its custody for the benefit of the creditor at whose instance the attachment takes place.— **11 T. L. R.**, *213*.

**9.** The attachment of property made in execution of a decree comes to an end the moment the whole amount due under it is paid into Court. The object of an attachment is to compel the debtor to pay up the judgment-debt. After the payment of the debt, the continuance of the attachment would be unjust and meaningless. The law does not require the formal withdrawal of attachment on payment made into Court, but leaves it to the parties to determine in each case whether they should obtain an order declaring that the attachment was at end.— **12 T. L. R.**, *23*.

Appl.—18 T. L. R., 79.

**10.** An attaching creditor does not "get" the property attached, but only seeks to realise the decree-debt by sale of the property. The creditor may or may not be the eventual purchaser of the property. The right derived by the decree-holder under the attachment is simply to prohibit private alienation of the property by the debtor until the decree-debt is paid and discharged. No sooner the debt is paid than the creditor ceases to have anything to do with the property.— **12 T. L. R.**, *188*.

Rel.—36 T. L. R., 56.

**11.** Where one mode of attachment is prescribed by law, and another method is followed, the improper mode of attachment has to be considered as a material irregularity. Such irregularity alone will not vitiate a sale held in pursuance of the attachment. To set aside a sale in execution of a decree, substantial injury in addition to material irregularity must be established (F. B.).— **20 T. L. R.**, *165*.

Appl.—8 T. L. J., 354.
Ex.— 18 T. L. J., 726.
Ref.— 19 T. L. J., 1113.

**12.** An omission to adopt any one of the steps to be taken in execution is only a material irregularity and a sale so made is not invalid unless substantial injury to the judgment-debtor is affirmatively shown (21 Cal. 66).

An attachment is a measure resorted to for the protection of the decree-holder and purchaser against intermediate alienations. After a Court-sale had been confirmed and a sale certificate granted to the purchaser, the sale is not to be considered a nullity merely by reason of the absence of attachment (18 Cal., 188).— **20 T. L. R.** *235*.

**13.** Attachment has only the effect of placing the property in *custodia legis*. It does not confer title, but merely prevents alienation. It creates no charge on the property (25 Cal., 179 and 29 Cal., 428).— **26 T. L. R.**, *83*.

**14.** An attachment confers no lien or interest in favour of the creditor but merely puts the property in *custodia legis* available

Decree for specific movable property.

**29.** (1) Where the decree is for any specific movable, or for any share in a specific movable, it may be executed by the seizure, if practicable, of the movable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in the civil prison of the judgment-debtor, or by the attachment of his property, or by both.

(2) Where any attachment under Sub-rule (1) has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of movable property, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(3) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease.

---

to the decree-holder in execution proceedings duly taken.— **K. P.**, *584*.

**15.** Attachment under legal process must be taken to have no validity, if it is vitiated by fraud.— **3 S. D.**, *9*.

**16.** See also—

Sec. 41.—**33 T. L. R.**, *197* (=**7 T. L. J.**, *367*).

---

**Or. XXI, r. 29** [=S. 256=*Or. XXI, r. 31*]

**I. 1.** In Sub-Rules (2) and (3), "six months" have been substituted for "three months."

**2.** In Sub-Rule (3), the words "to exist; and the property shall be returned on application to the person from whom it was taken" which occurred after the words "shall cease" at the end of the corresponding Para 3 of the old Section have been omitted.

**II.** In the Statement of Objects and Reasons appended to the Bill which became Regulation II of 1065, it was observed as follows:—

"Sections 259 and 260 (British) prescribe respectively 6 and 12 months for bringing attached property to sale, 3 and 6 months respectively seem to be sufficient. These Sections by *implication* direct that the property, not sold be returned to the parties. It is however thought advisable to

30. (1) Where the party against whom a decree for the specific performance of a contract or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced by his detention in the civil prison, or by the attachment of his property, or by both.

Decree for specific performance, for restitution of conjugal rights, or for an injunction.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under Sub-rule (1) or Sub-rule (2) has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of one year from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease.

---

provide distinctly for the return of such property. Accordingly these Sections are amended by reducing the time for sale, by one-half, and by providing for restoration of the property when it cannot be sold."—*Para 41.*

III. For Form of Warrant for seizure of specific movable property adjudged by decree, see Appendix E, Form No. 9.

IV. Section 259 of the Indian Code of 1882 (corresponding to Section 256 of Regulation II of 1065), had a provision for decrees for the recovery of wives. In the new Indian Code of 1908, reference to such a decree has been omitted. The Indian Special Committee who omitted it, said :—"There can be no such decree under the law, as a wife cannot be treated as a chattel to be delivered over to the husband. Where any third person prevents the wife from returning to her husband, the latter may obtain an injunction against him which may be enforced in case of disobedience by the imprisonment of the defendant, or by the attachment of his property or by both."

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

*Illustration.*

A, a person of little substance erects a building which renders uninhabitable a family mansion belonging to B. A, in spite of his detention in prison and the attachment of his property, declines to obey a decree obtained against him by B and directing him to remove the building. The Court is of opinion that no sum realisable by the sale of A's property would adequately compensate B for the depreciation in the value of his mansion. B may apply to the Court to remove the building and may recover the cost of such removal from A in the execution proceedings.

---

Or. XXI, r. 30 (1) [ = S. 257, Para 1
= *Or. XXI, r. 32* (1) ]
" r. 30 (2) [ = "
= *Or. XXI, r. 32* (2) ]
" r. 30 (3) [ = S. 257, Para 2
= *Or. XXI, r. 32* (3) ]
" r. 30 (4) [ = S. 257, Para 3
= *Or. XXI, r. 32* (4) ]
" r. 30 (5) [ = "
= *Or. XXI, r. 32* (5)
= En. Or. 42, r. 30. ]

I. *Sub-Rule* (1).—1. The corresponding Para 1 of Section 257 of the old Regulation was as follows :—

" When the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for the performance of, or abstention from, any other particular act, has been made, has had an opportunity of obeying the decree or injunction and has wilfully failed to obey it, the decree may be enforced by his imprisonment, or by the attachment of his property, or by both."

2. The corresponding Sub-Rule (1) of the British Indian Code has been amended by Act XXIX of 1923, which has added the following words after the word "enforced":—"in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction."

II. *Sub-Rule* (3).—1. The words "one year" have been substituted for "six months." See under previous Rule.

2. "Shall pay" has been substituted for "may pay."

III. 1. *Sub-Rule* (4).—1. "One year" has been substituted for "six months." See under previous Rule.

2. The words "or, if made, has been refused" have been substituted for the words "and granted."

3. The following words which occurred at the end, after the words "shall cease" have been omitted :—"to exist and the property shall be returned on application to the person from whom it was taken."

IV. 1. *Sub-Rule* (5).—1. "This is a new provision, and provides a remedy in cases such remedy is deemed applicable. The illustration makes it clear in what cases such remedy may be resorted to."—

*Notes on Clauses.*

2. "The Sub-Rule and the Illustration have been added to remedy a defect disclosed in practice. (18 W. R. 282: I. L. R., 8 Cal., 174)."— *India Gazette dated 21-3-1903, Pt. V.*

3. Rule 30 of Order XLII of the Rules of the Supreme Court, 1883, to which Sub-Rule (5) corresponds, is as follows :—

"If a mandamus, granted in an action or otherwise, or a mandatory order, injunction, or judgment for the specific performance of any contract be not complied with, the Court or a Judge, besides or instead of proceedings against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the judgment or order has been obtained, or some other person appointed by the Court or Judge, at the cost of the disobedient party, and upon the act being done, the expenses incurred may be ascertained in such manner as the Court or a Judge may direct, and execution may issue for the amount so ascertained, and costs.".

### Case Law.

1. Where in execution of a decree for restitution of conjugal rights against the wife, the latter set up the plea that she had divorced the plaintiff :

*Held.*—The divorce was of no avail if it was before the date of the decree.

If the divorce was after the decree, the defendant could set it up in execution under Section 238 C. P. C., [new Section 4C] as discharging the decree. The appeal must fail as the evidence showed that the divorce was after date of decree and it was a valid one.— **K. P.**, *296.*

Fol.—34 T. L. R., 65.

2. The plaintiff, a Makkathayam Hindu, alleging that his wife, a girl of 18 years of age, was being wrongfully kept back from him by defendant, her grandmother, sued for recovery of the wife. The District Judge being of opinion that without impleading the wife as a party defendant, an effective decree could not be passed, directed amendment of the plaint on impleading her. It was contended by the defendant in appeal that the addition of the wife as a party altered the nature of the suit and that as the order for amendment was made after the examination of some witnesses, it was irregular.

*Held.*-(1) Under the Civil Procedure Code there is no provision for the execution of a decree for the recovery of a wife. Section 257 of the Code only provides for decrees for restitution (which includes institution) of conjugal rights. The old British Indian Code of 1882 contained a provision (Section 259) for the execution of a decree for the recovery of a wife; but the new Code of 1908 has omitted it. (For reasons see under previous Rule). The plaint in effect was one asking for a direction being made for the wife's joining her husband, the defendant who obstructs such return being enjoined to refrain from opposing it. For the granting of that relief the wife should be a party to the suit and such amendment did not materially alter the nature of the suit.

(2) Courts are to act with considerable liberality in the matter of granting amendments and ought to correct all kinds of errors or mistakes which are not fraudulent or intended to over-reach the Court.—

**28 T. L. R., 1.**

Ref.—14 T. L. J., 543.
16 T. L. J., 517.

3. A valid divorce by the wife, made subsequent to the date of the decree in plaintiff's favour for restitution of conjugal rights, could be successfully pleaded in bar to the execution of the decree.

31. (1) Notwithstanding anything in Rule 30, the Court, either at the time of passing a decree for the restitution of conjugal rights or at any time afterwards, may order that the decree shall not be executed by detention in prison.

Discretion of Court in executing decrees for restitution of conjugal rights.

(2) Where the Court has made an order under Sub-rule (1) and the decree-holder is the wife, it may order, that, in the event of the decree not being obeyed within such period as may be fixed in this behalf, the judgment-debtor shall make to the decree-holder such periodical payments as may be just, and, if it thinks fit, require that the judgment-debtor shall, to its satisfaction, secure to the decree-holder such periodical payments.

(3) The Court may from time to time vary or modify any order made under Sub-rule (2) for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same, either wholly or in part as it may think just.

(4) Any money ordered to be paid under this Rule may be recovered as though it were payable under a decree for the payment of money.

---

A marriage, contracted between members of the Makkathayee Ezhavas of South Travancore, could be dissolved at the pleasure of either party. The customary requisites for a valid divorce, among the community, were the meeting of the caste-men and the settlement of the marital claims in their presence with the return of the 'Tali' or 'Mangalyam'.— **34 T. L. R., 65.**

**Or. XXI, r. 31** [ = „ = *Or. XXI, r. 38* ]

**I. 1.** "This Rule provides for new methods of working out a decree for restitution of conjugal rights. In such matters, the Court should have large powers of control over the parties and be in a position not to send an unwilling wife, for instance, to prison, and to provide for the support of a wife, who has obtained a decree for restitution."
***Notes on Clauses.***

**2.** This Rule was taken from the Matrimonial Clauses Act, 1884 (47 and 48 Vict., C. 68, Secs. 2-4).

II. In proposing this provision, it was observed as follows in the Statement of Objects and Reasons appended to the amending India Bill of 1901:—"Under the Code as it now stands, a Court cannot refuse to execute a decree for the restitution of conjugal rights by the attachment of the person or property of a recalcitrant judgment-debtor; but in England this mode of execution has been put an end to by the enactment of the Matrimonial Clauses Act (47 & 48 Vict., c. 68). It is thought that some relaxation of the provision in force in India is desirable, but it is extremely doubtful whether it should go so far as this. The question is of great difficulty and delicacy, and for the present it is proposed tentatively

Decree for execution of document or endorsement of negotiable instrument.

32. (1) Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.

(2) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.

(3) Where the judgment-debtor objects to the draft, his objections shall be stated in writing within such time, and the Court shall make such order approving or altering the draft, as it thinks fit.

(4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.

---

only to give the Courts discretion in the matter and to enable them to follow a procedure slightly adapted from the English practice in the cases in which attachment and imprisonment appear inappropriate."—

*India Gazette dated 21-12-1901, Pt. V.*

III. The British Indian Rule has since been amended as follows by Act XXIX of 1923 :-

1. In Sub-Rule (1), the words "against a husband" have been inserted after the words "passing a decree".

The words "shall be executed in the manner provided in this Rule" have been substituted for the words "shall not be executed by detention in prison".

2. In Sub-Rule (2), the words "and the decree-holder is the wife" which occurred after the words "under Sub-Rule (1)" have been omitted.

---

Or. XXI, r. 32 (1) to (4) [= S. 258 = *Or. XXI, r. 34* (1) to (4) ]

" r. 32 (5) [= S. 259 = *Or. XXI, r. 34* (5) ]

" r. 32 (6) [= " = *Or. XXI, r. 34* (6) ]

I. 1. Throughout, the word "document" has been substituted for "conveyance."

2. The Paras of Section 258 corresponding to Sub-Rules (3) and (4) were as follow :—

(5) The execution of a document or the endorsement of a negotiable instrument under this Rule may be in the following form, namely :—

"C. D., Judge of the Court of

(or as the case may be), for A. B., in a suit by E. F. against A. B.",

and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

(6) The Court, or such officer as it may appoint in this behalf, shall cause the document to be registered if its registration is required by the law for the time being in force or the decree-holder desires to have it registered, and may make such order as it thinks fit as to the payment of the expenses of the registration.

Decree for immovable property.

33. (1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

---

"The decree-holder may also tender a duplicate of the draft to the Court for execution, upon the proper stamp-paper if a stamp is required by law.

On proof of such service, the Court or such officer as it appoints in this behalf shall execute the duplicate so tendered, or may, if necessary, alter the same, so as to bring it into accordance with the terms of the decree and execute the duplicate so altered :

Provided that, if any party object to the draft so served as aforesaid, his objection shall, within the time so fixed, be stated in writing and argued before the Court, and the Court shall thereupon pass such order as it thinks fit, and execute, or alter and execute, the duplicate in accordance therewith."

II. The Indian Special Committee observed that "Section 261 has been recast so as to bring it into conformity with the chronological order of events, and a provision has been added to meet the requirements of the Indian Registration Act."

III. For Form of Notice to state objections to draft of document, see Appendix E, Form No. 10.

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

---

**Or. XXI, r. 33** (1) [ = S. 260 = *Or. XXI, r. 35* (1) ]

" r. 33 (2) & (3) [ = " = *Or. XXI, r. 35* (2) & (3) ]

I. Sub-Rules (2) and (3) which are new, are intended "to meet some of the difficulties encountered in practice with regard to co-sharership, the forcing of entry, not provided for by the present Code."—

*India Gazette dated 21-12-1901, Pt. V.*

II. For Form of warrant to the Amin to give possession of land, &c., see Appendix E, Form No. 11.

**Case Law.**

**1.** Where the decree is against one of two undivided brothers of a Hindu family, possession should be given under Section 248 (Regulation II of 1037) by a proclamation leaving the joint tenants to effect a partition of the property by metes and bounds.— **7 T. L. R. App., 50.**

[Section 248 referred to was as follows :—

"248. If the property sold shall consist of land or other immovable property in the occupancy of ryots or other persons entitled to occupy the same, the Court shall order delivery thereof to be made by affixing a copy of the certificate of sale in some conspicuous place on the land or other immovable property, and proclaiming to the occupants of the property by beat of drum, or in such other mode as may be customary, at some convenient place or places, that the right, title, and interest of the defendant has been transferred to the purchaser."]

**2.** *Per Raman Menon, C. J.*—The effect of delivery in execution of a decree for immovable property [see Sections 260 and 261] in the mode prescribed by law is to vest legal possession in the decree-holder, as between himself and the person or persons against whom the decree has been passed.

If after the delivery the judgment-debtor remains or goes on the property without the permission of the decree-holder, he commits trespass. Whether it would be criminal trespass or not, would depend on the presence or absence of the requisite *mens rea.*

*Per Muthunayagom Pillai, J.*—The delivery of possession of property in execution of decree for the same even if it were only formal, has the effect of determining the previous possession of the persons against whom the decree was passed. Therefore, if being aware of the delivery, they enter upon the property after such delivery, it

Decree for delivery of immovable property when in occupancy of tenant.

34. Where a decree is for the delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property:

Provided that, if the occupant can be found, a notice in writing containing such substance shall be served upon him, and in such case no proclamation need be made.

*Arrest and detention in the civil prison.*

Discretionary power to permit judgment-debtor to show cause against detention in prison.

35. (1) Notwithstanding anything in these Rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court may, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison.

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue warrant for the arrest of the judgment-debtor.

---

would amount to an offence under Section 449 of the Penal Code.—

**33 T. L. R.,** ***67***
**(= 7 T. L. J.,** ***330*****).**

**Ref.**—40 T. L. R., 73
(=14 T. L. J., 252).

**3.** See also—

Sec. 43.—**12 T. L. J.,** ***316.***
Or. XXI, r. 93.—**19 T. L. J.,** ***998.***

**Or. XXI, r. 34** [=S. 261=*Or. XXI, r. 36*]

The Proviso is omitted in the corresponding Rule of the British Indian Code.

**Case Law.**

See under previous Rule.

**Or. XXI, r. 35** [=S. 241=*Or. XXI, r. 37*]

For Form of Notice to show cause why warrant of arrest should not issue, see Appendix E, Form No. 12.

36. Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid.

Warrant for arrest to direct judgment-debtor to be brought up.

37. (1) No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as the Judge thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the Court.

Subsistence allowance.

(2) Where a judgment-debtor is committed to the civil prison in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under Section 49 or where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

(3) The monthly allowance fixed by the Court shall be supplied by the party on whose application the judgment-debtor has been arrested by monthly payments in advance before the first day of each month.

(4) The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to the civil prison, and the subsequent payments (if any) shall be made to the officer in charge of the civil prison.

(5) Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in the civil prison shall be deemed to be costs in the suit:

Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

---

Or. XXI, r. 36 [=S. 326=*Or. XXI, r. 38*]

1. For Form of warrant of arrest in execution, see Appendix E, Form No. 13.

2. Section 326 enacts what the contents of a warrant of arrest should be and thereby makes it clear that a written warrant authorising the arrest is essential.—
2 S.D., *379.*

Or. XXI, r. 37 (1) to (4) [=S. 329 =*Or. XXI, r. 39* (1) to (4)]

„ r. 37 (5) [= S. 330 = *Or. XXI, r. 39* (5)]

1. In Sub-Rule (1), the words "having regard to the scales so fixed" which occurred after the words "such sum as," in the corresponding old Section have been

38. (1) Where a judgment-debtor appears before the Court in obedience to a notice issued under Rule 35, or is brought before the Court after being arrested in execution of a decree for the payment of money, and it appears to the Court that the judgment-debtor is unable from poverty or other sufficient cause to pay the amount of the decree or, if that amount is payable by instalments, the amount of any instalment thereof, the Court may, upon such terms (if any) as it thinks fit, make an order disallowing the application for his arrest and detention, or directing his release, as the case may be.

Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.

(2) Before making an order under Sub-rule (1), the Court may take into consideration any allegation of the decree-holder touching any of the following matters, namely:—

(*a*) the decree being for a sum for which the judgment-debtor was bound in any fiduciary capacity to account;

(*b*) the transfer, concealment or removal by the judgment-debtor of any part of his property after the date of the institution of the suit in which the decree was passed, or the commission by him after that date of any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the decree-holder in the execution of the decree;

(*c*) any undue preference given by the judgment-debtor to any of his other creditors;

(*d*) refusal or neglect on the part of the judgment-debtor to pay the amount of the decree or some part thereof when he has, or since the date of the decree has had, the means of paying it;

---

omitted; and the words "the time of" inserted before the words "his arrest."

2. In Sub-Rule (3), the words "the judgment-debtor has been arrested" have been substituted for the words "the decree has been executed."

**Case Law.**

A warrant issued for the arrest of the judgment-debtor was made returnable on the 24th Kartigai. On the 23rd, the judgment-debtor was brought up in arrest, but the plaintiff not being present to pay batta, the judgment-debtor was released. This was irregular, as plaintiff had apparently no notice of the arrest.— **7 T. L. R. App., 49.**

**Or. XXI, r. 38** [=S. 337= *Or. XXI, r. 40*]

I. 1. Clause (*a*) of the second paragraph of the old Section was :—"the decree be-

(e) the likelihood of the judgment-debtor absconding or leaving the jurisdiction of the Court with the object or effect of obstructing or delaying the decree-holder in the execution of the decree.

(3) While any of the matters mentioned in Sub-Rule (2) are being considered, the Court may, in its discretion, order the judgment-debtor to be detained in the civil prison, or leave him in the custody of an officer of the Court, or release him on his furnishing security, to the satisfaction of the Court, for his appearance when required by the Court.

(4) A judgment-debtor released under this Rule may be re-arrested.

(5) Where the Court does not make an order under Sub-Rule (1), it shall cause the judgment-debtor to be arrested if he has not already been arrested and, subject to the other provisions of this Code, commit him to the civil prison.

*Attachment of property.*

Examination of judgment-debtor as to his property.

39. Where a decree is for the payment of money, the decree-holder may apply to the Court for an order that—

(a) the judgment-debtor, or

(b) in the case of a corporation, any officer thereof, or

(c) any other person,

---

ing for a sum for which the judgment-debtor was bound, as a trustee or as acting in any other fiduciary capacity, to account."

2. In Clause (c), the words "or unreasonable" which occurred after the word "undue" has been omitted.

II. For Form of warrant of committal of judgment-debtor to jail, see Appendix E, Form No. 14.

**Case Law.**

1. In execution of a decree, the judgment-debtor was arrested and produced before Court. The Court ordered his commitment to jail. The warrant of commitment to the Jailor was handed over to a process-peon who was also directed to take the debtor to the jail; but no warrant, authorising the peon to keep the debtor in custody till his being handed over to the Jailor, was drawn up and given to the peon. On their way to the jail, the debtor escaped from custody.

*Held.*—In the absence of a warrant authorising the peon to keep him in custody till he was entrusted to the Jailor (as prescribed by Civil Circular No. 70 of 1079), he was not in the lawful custody of the process-peon, and therefore, his escape therefrom was not an offence under Section 224, Penal Code.— **2 S. D.,** ***379.***

2. See also—

Sec. 50.—**7 T. L. R. App.,** ***49.***

Or. XX, r. 11.—**19 T. L. J.,** ***814.***

---

**Or. XXI, r. 39** [=S. 264=***Or. XXI, r.*** 41]

be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person, and for the production of any books or documents.

Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined.

40. Where a decree directs an inquiry as to rent or mesne profits or any other matter, the property of the judgment-debtor may, before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money.

Attachment of movable property other than agricultural produce, in possession of judgment-debtor.

41. Where the property to be attached is movable property, other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

---

I. Section 264 of Regulation II of 1065 was as follows:—

"264. *Power to summon and examine persons as to property liable to be seized.*—The Court may, of its own motion or on the application of the decree-holder, summon any person whom it thinks necessary, and examine him in respect to any property liable to be seized in satisfaction of the decree, and may require the person summoned to produce any document in his possession or power relating to such property, and, before issuing the summons of its own motion, shall declare the person on whose behalf the summons is so issued."

II. See Section 52 as to property that may not be attached.

**Or. XXI, r. 40** [=S. 251=*Or. XXI, r. 42*]

The corresponding Section of the old Regulation was as follows:—

"251. *Decree for mesne profits or other matter, amount of which to be subsequently ascertained.*—If the decree be for mesne profits or any other matter, the amount of which in money is to be subsequently determined, the property of the judgment-debtor may, before the amount due from him under the decree has been ascertained, be attached as in the case of an ordinary decree for money."

**Or. XXI, r. 41** [ = S. 266=*Or. XXI, r. 43*]

The corresponding Section of the old Regulation was as follows:—"If the property be movable property in the possession of

42. Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment,—

Attachment of agricultural produce.

(a) where such produce is a growing crop, on the land on which such crop has grown, or

(b) where such produce has been cut or gathered, on the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the judgment-debtor ordinarily resides or, with the leave of the Court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain; and the produce shall thereupon be deemed to have passed into the possession of the Court.

43. (1) Where agricultural produce is attached, the Court shall make such arrangements for the custody thereof as it may deem sufficient and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.

Provisions as to agricultural produce under attachment.

(2) Subject to such conditions as may be imposed by the Court in this behalf either in the order of attachment or in any subsequent order, the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and if the judgment-debtor fails to do all or any of such acts, the decree-holder may, with the permission of the Court and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this behalf, and the costs incurred by the decree-holder shall be recoverable from the judgment-debtor as if they were included in, or formed part of, the decree.

---

the judgment-debtor, other than the property mentioned in the first Proviso to Section 263, the attachment shall be made...... thereof.

Provided.........in custody will exceed its value, the proper officer may sell it at once."

Or. XXI, r. 42 [=,,= *Or. XXI, r. 44*]

Or. XXI, r. 43 [=,,= *Or. XXI, r. 45*]

I. "Rules 42 and 43 are new, and are meant for regulating the taking of produce of land in execution of a decree".—*Notes on Clauses.*

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has beem made at a considerable time before the crop is likely to be fit to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this Rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

---

II. The provisions contained in Rules 42 and 43, are among the material alterations made in the Code relating to execution. The British Indian Rules are adopted *in toto*. The following observations, made in the Statement of Objects and Reasons appended to the amending Indian Bill of 1901 and the Select Committee Report thereon explain the nature of the provisions and the principles underlying them. It may be stated that the provisions were inserted in the Bill with the approval of the Government of India. The Select Committee who reported on that Bill modified the provisions; and the Indian Special Committee reproduced them as amended by the Select Committee.

1. "Growing crops will no longer be treated as immovable property, but will fall within the purview of the simpler remedies provided in the case of movables. At the same time, a measure of protection will be extended to agriculturist judgment-debtors by providing for the exemption by the Local Government of a proportion of their crops from attachment."— *S. O & R.*

2. The Notes on Clauses said :—

"The inclusion of growing crops in the category of movable property will remove perhaps the most valuable assets of the country from the operation of the cumbrous procedure rendering their effective attachment almost impossible and will subject them to the short and sharp process of seizure. In the interests, however, both of creditor and debtor, some special provisions are demanded by the peculiar character of the subject. In order to secure to both parties the fullest value from the property attached, the crop must be allowed to mature in the usual course of husbandry, and actual seizure must, therefore, take the shape of such arrangements for custody as the Court may deem sufficient, having regard to the variety of local conditions of tillage and the nature of the products affected. In this connection, however, the experience gathered from the working of Sub-section (1) (*g*) of Section 122 of the Bengal Tenancy Act, 1855, discloses that the decree-holder can and should be required to inform the Court, in his application, of the time at which the crop is likely to be cut or gathered. On the analogy of Section 126 of the same enactment, which has its counterpart in the rent-law of other Provinces, it is proposed to empower the judgment-debtor to continue to perform all acts of husbandry and, if he endeavours to defeat the attachment by neglecting the crop, the decree-holder will be authorised to intervene and

44. (1) In the case of—

Attachment of debt, share and other property not in possession of judgment-debtor.

(a) a debt not secured by a negotiable instrument,
(b) a share in the capital of a corporation,
(c) other movable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court, the attachment shall be made by a written order prohibiting,—

(i) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court;

(ii) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

(iii) in the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

(2) A copy of such order shall be affixed on some conspicuous part of the Court-house, and another copy shall be sent in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation and, in the case of the other movable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) or Sub-Rule (1) may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

---

to protect his interests. The effect, however, of permitting a growing crop to be cut or gathered will be to remove it from the definition in so far as it will have ceased to be 'attached to the soil', and it is accordingly proposed to enact that, to avoid any possible difficulty analogous to that now arising in regard to the continuance of the attachment of a crop ceasing to be 'immovable property' after being severed, the attachment should continue after cutting or gathering. A discretion to suspend attachment when the period of maturity is distant and a discretion to refuse applications presented within twenty days before the maturity of a crop not lending itself to storage, have been borrowed from Sections 123 (4) and 124 of the Bengal Act."—

*India Gazette dated 21-12-1901, Pt. V.*

3. The Select Committee in their Report said :—"We have extended this provision which originally affected 'growing crops' only to all 'agricultural produce.' We entirely concur in the principle adopted in the Bill that the Court should attach such produce, which will now in all cases be treated as movable property, by taking it into its possession and custody. At the same time,

the procedure relating to the 'actual seizure' of movables cannot be applied in its entirety, to a growing crop and, having regard to the special provisions suggested by us in Clause 295-B [see Rule 71 *Infra*] with respect to the sale of 'agricultural produce', we see considerable objection to allowing such produce to be ordinarily removed on attachment. In these circumstances, we think that to give proper effect to Clause 295-B, attachment should be effected by affixing a notice *in situ* on the field or threshing floor, and also by way of greater caution, on the judgment-debtor's ordinary place of residence. To meet special cases of persons not residing in the actual neighbourhood, we would allow, under the special orders of the Court, affixure on the house in which the judgment-debtor carries on business or personally works for gain or in which he is known to have last resided or personally worked for gain. We have provided that the costs of the attachment shall be added to the decree.— *India Gazette dated 21-3-1903, Pt. V.*

**Or. XXI, r. 44** [ = S. 265, Paras 1 to 3 = *Or. XXI, r. 46* ]

I. The old Section 265 had three Paragraphs more, for which see under Rule 46, *Infra*.

II. For Forms of Prohibitory Orders *re* Attachment in execution, see Appendix E, Forms Nos. 16, 17 and 18.

### Case Law.

1. A executed a registered debt-bond to B for a certain sum of money, pledging, as security, with him (B) a debt-bond executed in A's favour by C. In execution of a decree against B, his right, title and interest in the said registered bond (executed by A) were sold and purchased by D, the attachment by Court being made by means of prohibitory notices under Section 220 (old) Civil Procedure Code, and not by actual seizure. The Court, therefore, which made the attachment, did not deliver the bond to D, but simply furnished him with a sale certificate. Some time after this, in execution of another decree passed against B, the debt bond obtained by A from C and pledged as security to B was also attached by actual seizure and sold to, and purchased by, E who was put in possession of this bond by Court. E subsequently delivered the bond to C on his paying E the amount secured thereby. D sought recovery from A of the amount of the registered bond executed by A to B in virtue of his right as purchaser thereof. A pleaded non-liability to pay the amount sued for, unless D delivered to him not only the bond sued on (the one executed by A to B) but also the bond executed to A by C and pledged with B.

*Held* (*Justice Ormsby dissenting*).—The registered bond in question not being a negotiable instrument, was not governed by Section 222 of the (old) Civil Procedure Code which required that the attachment of negotiable instruments should be made by actual seizure.

The legal mode of attaching debt bonds of the kind (which are not negotiable instruments) was by prohibiting the obligee from receiving the payment, and the obligor from paying the debt.

No rule specially applicable to the sale of non-negotiable instruments, is prescribed in the Code.

A debt-bond not attached by actual seizure may be sold since Section 249, old C. P. C., authorizes the delivery of such bonds to purchasers being made by service of prohibitory notices on the obligor and obligee.

Actual delivery of bonds of this description is not necessary to give validity to its attachment and sale.

A judgment-debtor, by handing over a bond already attached by means of prohibitory notices to a subsequent attaching creditor, cannot defeat the prior attachment and sale legally made.—**6 T. L. R., *1*.**

[Section 222 of Regulation II of 1037 provided for attachment of negotiable instruments by actual seizure; and Section 249 related to delivery of debts not being negotiable instruments, and of shares in public companies.]

**2.** A judgment-debtor's mortgage lien secured by a document should be regarded as immovable property, for the purpose of attachment and sale in execution of the decree against him. The provisions of the Civil Procedure Code relating to attachment and sale of such properties should be strictly followed in bringing such lien to sale.— **8 T. L. R. App., *54*.**

Ex.—20 T. L. R., 165.

**3.** Suit by a purchaser of hypothecation bond at a court-auction, to recover from the obligor and from the hypothecated property the amount due under the bond. The court sale not having been conducted under the procedure applicable to real property and the sale certificate granted to plaintiff not having been registered, it was contended that the sale was *ab initio* invalid :

*Held.*—A hypothecation deed consists of two obligations,—

(1) to pay the debt as a simple debt and

(2) the creation of a charge on the real property in the way of collateral security.

The failure to adopt the procedure prescribed for sale of immovable property and the non-registration of the sale-certificate deprive the purchaser of the right to recover the debt as a specific charge on the property hypothecated; but the sale of the bond as movable property, does not invalidate the transfer to the purchaser of the right to enforce the first obligation, *i. e.*, the right to recover the debt from the obligor (defendant) and his property as a simple debt.— **11 T. L. R., *177*.**

Overruled.—20 T. L. R., 165.

**4.** Suit for recovery of money under a hypothecation bond attached and sold in execution of a decree obtained by plaintiff against the hypothecatee. The defendants, the hypothecators, pleaded discharge to the hypothecatee on the latter's production of a certified copy of a false order purporting to have been passed by the execution Court to the effect that the said decree was satisfied out of Court :

*Held.*—(1) The attachment notice served upon the defendants imposed upon them the legal duty of the payment of the debt due into Court for payment to the plaintiff in satisfaction of his decree. The alleged payment by the defendants to the hypothecatee, even if true, is no defence to the plaintiff's action as it does not exonerate them from the liability imposed by the prohibitory notice served on them under the express provisions of law and not duly withdrawn.

(2) The fraud committed by the debtor under the decree in execution of which the bond in question was attached and sold, does not affect the plaintiff who was no party thereto.— **14 T. L. R., *19*.**

**5.** A, a judgment-creditor, purchased in execution, the debt due to his judgment-debtor Y from X to whom a notice was sent prohibiting him from paying the debt to anybody except A. X put in a petition under Section 265 of the Civil Procedure Code tendering the sum and praying that the same should not be paid to A, but held in deposit till the dispute between the latter's debtors and their relatives was settled. No notice of deposit was given to A. Suit was by A for recovery of the debt purchased by him in auction. On the contention that the suit was not maintainable :

*Held.*—(1) The suit was maintainable.

(2) X should have paid the money into Court to the credit of A unconditionally;

and if the former chose to make a protest, the latter was not bound to take the money subject to any liability which might arise as a consequence of such protest.

Section 362 [= Or. XXIV, r. 2] lays down that when money is deposited by a defendant in any suit to recover a debt or damages, notice in writing of the deposit shall be given through the Court by the defendant to the plaintiff. It is not clear under what provision of law X (defendants' father) paid the money into Court after the debt was sold. His petition tendering the money purported to be under Section 265, but that Section did not apply as the debt had been sold and notice thereof given to X. But whether considered as money paid under Section 265 or otherwise legally deposited, the principle of Section 362 will apply, and X was bound to send notice of the deposit to the plaintiff. He failed to do so, and the plaintiff brought his suit for the recovery of the debt purchased by him.—

**18 T. L. R.**, *249*.

**6.** A executed a Chitty security bond to X, the foreman of the Chitty, hypothecating the plaint property and afterwards sold the property to B subject to the hypothecation, *i. e.*, with direction to pay the Chitty subscriptions to X. C another subscriber to the same Chitty obtained a decree against X and assigned it to D and the latter attached the debt reserved with B and purchased in auction the right to recover the same. The lower Courts on the authority of XI T. L. R., 177, over-ruled D's right to proceed against the security in B's hands on the ground that the debt was attached simply as a debt under Section 265, C. P. C., and not in the mode prescribed by Section 271 [=Or. XXI, r. 52] for attaching immovable property.

*Held* (by the majority on reference to the Full Bench over-ruling XI T. L. R., 177 and the decisions based thereon).—

(1) The procedure to be followed in the attachment and sale of a simple mortgage or hypothecation debt is that laid down under Section 265, C. P. C.

(2) The sale of the debt in pursuance of the attachment would necessarily carry with it the right to the security.

(3) A material irregularity caused by attaching under a wrong Section unaccompanied by substantial injury would not vitiate the sale.— **20 T. L. R.**, *165*.

Appl.—8 T. L. J., 354.
Ex.—18 T. L. J., 726.
Ref.—19 T. L. J., 1113.

**7.** A owed a debt to B under a bond. In execution of a decree obtained by C against B the debt under the bond was attached on 21—1—83 by a written order of prohibition under Section 265, Civil Procedure Code. On 24—1—83 A paid the amount of the debt into Court which issued the prohibitory order. On 19—12—82, P had obtained an assignment of the bond from B and he gave notice of the assignment to A on 3—2—83 and demanded payment of the debt which was refused. P therefore, sued A for recovery of the amount under the bond. It was contended on behalf of P that the attachment of the debt was not in accordance with the provisions of the law inasmuch as a copy of the prohibitory order was not affixed in a conspicuous part of the Courthouse as required by Section 265, and that the payment in pursuance of such attachment was, therefore, ineffectual to absolve the debtor from his liability under the bond.

*Held.*—The payment into Court was an effectual discharge of the debtor's liability.

One of the clauses of Section 265 clearly lays down that a debtor prohibited by an order from making payment to his creditor, may pay the amount of his debt into Court and thus obtain effectual discharge. The debtor who receives the prohibitory notice is in no way concerned with its publication in the Court-house. The clause in question does not make the validity of the discharge

dependent on the due publication of the prohibitory order. The receipt of the order by the debtor and his payment into Court in pursuance of it, is all that is essential under the Clause to obtain his discharge.—

**29 T. L. R.**, *22*
(= **3 T. L. J.**, *266*).

Fol.—10 T. L. J., 95.

**8.** The procedure laid down by Section 265, C. P. C., must be followed when a mere charge on immovable property is sought to be attached and brought to sale.

Where an attachment which ought to have been made under Section 265, C. P. C. is made under Section 271, C. P. C., [=Or. XXI, r. 52] the creditor who is thereby deprived of the opportunity of having notice of the prohibitory order involved in a proper attachment, ought to be protected if he makes a *bona fide* payment to the judgment-debtor.— **8 T. L. J.**, *354*.

Ex.—18 T. L. J., 726.

**9.** The defendants in a suit assigned their rights in a Chitty security bond and the assignee gave notice of the assignment to the subscriber (debtor). After this a prohibitory order under Section 265 C. P. C. was passed and served on the debtor in a suit against the Chitty foreman and he deposited the amount in Court in pursuance to such order. In a suit by the assignee against the debtor :

*Held.*—Payment into Court discharged the liability of the debtor as effectively as payment to the party entitled to receive the same.— **10 T. L. J.**, *95*.

**10.** A foreman refused to accept tender of subscriptions from an unprized subscriber for a particular drawing, and the subscriber sued to compel acceptance thereof. The suit was decreed in terms of the plaint. The subscriptions for the subsequent drawings were refused when tendered. Plaintiff claimed to recover the paid-up subscriptions, with interest from date of termination of chitty.

*Held.*—Under the circumstances, it was not incumbent on the plaintiff-subscriber to tender subscriptions for the subsequent instalments till disposal of that suit. The conduct of the foreman would in such a case amount to a waiver of tender. But the plaintiff was bound to tender all the subscriptions in arrears, with that for the current drawing immediately after the date of disposal of the suit. If this had not been done, he would be a defaulter in the eye of the law. A readiness to pay would not *per se* amount to a tender.

In regard to interest, it was contended that the defendant was not liable therefor by reason of a prohibitory notice received by him in pursuance of an attachment before judgment effected in a suit in another Court, and he could not have paid the amount really due to the plaintiff. This contention could not be upheld, as after attachment it was open to the defendant to deposit the amount in his hands in the attaching Court and get himself discharged from all liability. Or. XXI, Rule 44, enables the person to whom notice of attachment of a debt is sent to deposit the amount of such debt in Court and get an effective discharge of his liability for the same. The fact that, in the case, the attachment was before judgment could not affect the position, for under Order XXXVI, Rule 7, attachments before judgments are required to be made in the same manner as those made in execution of decrees and the effect of an attachment before judgment is the same as that made in execution of a decree. The enabling provisions contained in Order XXI, Rule 44, regarding deposit of amounts of debt attached has to be held applicable to attachments before judgments also.—

**18 T. L. J.**, *651*.

**11.** Though the term "immovable property" has not been defined in the Nair Regulation, the right under a hypothecation bond is immovable property within the meaning of the term used in Section 25 of that Regulation.

45. Where the property to be attached consists of the share or interest of the judgment-debtor in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the judgment-debtor prohibiting him from transferring the share or interest or charging it in any way.

Attachment of share in movables.

46. (1) Where the property to be attached is the salary or allowances of a public officer or of a servant of a local authority, the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of Section 52, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and, upon notice of the order to such officer as the Government may, by Notification in the Government Gazette, appoint in this behalf, the officer or other person whose duty it is to disburse such salary or allowances shall withhold and remit to the Court the amount due under the order, or the monthly instalments, as the case may be.

Attachment of salary or allowances of public officer or servant of local authority.

---

The rulings in 20 T. L. R., 165 and 8 T. L. J., 354 can be taken to lay down only the procedure of attachment of hypothecation debts, *quo* debts, and not as declaring that the rights created thereunder would not be a benefit arising out of land as contemplated in the definition of immovable property under the General Clauses Regulation.—

**18 T. L. J.,** ***726.***

**12.** See also—

Sec. 52.—**6 T. L. R.,** ***81.***
Or. XXI, r. 28.—**11 T. L. R.,** ***202.***

**Or. XXI, r. 45** [= „ = *Or. XXI, r. 47*]

It was the Select Committee on the Indian Bill of 1901 that proposed the new Section which is reproduced as Rule 47 in the present Indian Code and adopted as Rule 45 in the Regulation. In proposing the Section, the Committee observed :—"It frequently occurs that the property to be attached consists of a share or interest in movable property belonging to the judgment-debtor and others in co-ownership. Such a share or interest is obviously incapable of actual seizure. We are not prepared to accept a proposal that in such cases the entire property should be attached and sold, and the co-owners other than the judgment-debtor relegated to their rights either of redemption or of participation in the sale-proceeds. No doubt the extreme frequency of co-ownership presents a formidable obstacle to the rapid and effectual execution of decrees; but, at the same time, we do not feel justified in furthering the interest of the decree-holder at the expense of proprietary rights belonging to third parties. In these circumstances, we see no other solution open to us than to provide for the issue to the judgment-debtor of a notice prohibiting him from transferring or charging the share or interest."— *India Gazette dated 21-3-1903, Pt. V.*

**Or. XXI, r. 46** [= „ = *Or. XXI, r. 48*]

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by the Government in this behalf shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

(3) Every order made under this Rule, unless it is returned in accordance with the provisions of Sub-Rule (2), shall, without further notice or other process, bind the Government or local authority, as the case may be, while the judgment-debtor is within Travancore and while he is beyond Travancore if he is in receipt of any salary or allowances payable out of Government revenues or the funds of a local authority in Travancore; and the Government or local authority, as the case may be, shall be liable for any sum paid in contravention of this Rule.

---

I. The provisions contained herein do not appear to be altogether a novelty, as may be seen from the last three Paras of Section 265 of Regulation II of 1065 which were as follow :—

"In the case of the salary of a public officer, the attachment shall be made by a written order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct, until the further orders of the Court.

"A copy of every such order shall be fixed up in a conspicuous part of the Court-house, and shall be served on the officer so required.

"Every such officer may, from time to time, pay into Court any portion so withheld, and such payment shall discharge the Government as effectually as payment to the judgment-debtor."

Under the above provisions, the salary of a public officer could not be attached unless the disbursing officer was within the local limits of the jurisdiction of the Court executing the decree. This involves considerable difficulty in the execution of such decrees and great expense to the decree-holder.

II. The present Rule reproduces the corresponding Rule of the British Indian Code. The circumstances which led to the enactment of that Rule in British India are thus explained in the Notes on Clauses appended to the 1901 Bill :—"Officers of the army serving in this country whether they do or do not belong to the Indian forces, are public officers within the meaning of the Code of Civil Procedure. Under Section 151 (3) of the Army Act (44 & 45 Vict., c. 58) such officers were liable to stoppage of one-half of their pay in execution of decrees and such orders remained in force wherever the judgment-debtor was in India. When this provision was repealed as a sequel to the abolition of the Courts of Request, an addition was made to Section 136 by the Army (Annual) Act, 1895, to legalize deductions authorized by any law passed by the Governor-General of India in Council. This provision, in view of the definition of 'public officer', placed military and civil officers on the same footing for the purposes of ataachment under the Code of Civil Procedure. Owing to the comparatively more frequent and rapid transfers of military officers to places at a considerable distance, attention has been directed somewhat more pointedly to an inconvenience which, to a greater or smaller extent, is experienced in connection with

Attachment of partnership property.

47. (1) Save as otherwise provided by this Rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.

(2) The Court may, on the application of the holder of a decree against a partner, make an order charging the interest of such partner in the partnership property and profits with payment of the amount due under the decree, and may, by the same or subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree-holder by such partner, or as the circumstances of the case may require.

---

the various branches of the public services in India. A public officer, whatever the amount of his indebtedness, remains, by virtue of statutory exemption, in enjoyment of one moiety of his salary, while his creditor, by reason of the application of the provisions relating to local jurisdiction, must follow him from Court to Court all over the country with troublesome and expensive applications for transfer and attachment. It has, moreover, been represented that a tradesman at a distance ought not to be burdened with responsibility for tracing out the actual officer disbursing the salary; and the facts of an incident reported disclose that it is possible, in practice, for a public servant acting as his own paymaster to place the most serious obstructions in the way of execution. In these circumstances, it is proposed to revert, in substance, to the provisions of Section 151, Sub-section (3), of the Army Act, but to extend them to all public officers, railway servants and servants of local authorities; and to cast the responsibility on the Government or the Company or authority concerned for making its arrangements for receiving notice and for effecting the proper deduction. As a corollary to these suggestions, it is believed that the order may reasonably be declared effective, not merely while the judgment-debtor is in India, but while he is in receipt of emoluments from the Indian revenues or from the funds of an Indian local authority or of a Railway Company carrying on business in British India."—

*India Gazette dated 21-12-1901, Pt. V.*

III. For Form of Order to attach salary of Public Officer or servant of local authority, see Appendix E, Form No. 19.

**Or. XXI, rr. 47 & 48:** "These Rules are new, and deal with execution against partners and partnership. The former Rule provides for execution of decree against a person who happens to be a partner with another, and the latter Rule provides for execution of decrees obtained against a firm. The necessity for such Rules is obvious."— *Notes on Clauses.*

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

(4) Every application for an order under Sub-Rule (2) shall be served on the judgment-debtor and on his partners or such of them as are within Travancore.

(5) Every application made by any partner of the judgment-debtor under Sub-rule (3) shall be served on the decree-holder and on the judgment-debtor, and on such of the other partners as do not join in the application and as are within Travancore.

(6) Service under Sub-rule (4) or Sub-rule (5) shall be deemed to be service on all the partners, and all orders made on such applications shall be similarly served.

---

**Or. XXI, r. 47** (1) to (3) [= „ = *Or. XXI, r. 49 (1) to (3)* = 53 & 54 Vict. c. 39, S. 23 ]

„ **r. 47** (4) to (6) [ = „ =*Or. XXI, r. 49 (4) to (6)* = En. Or. 46, rr. 1-A & 1-B ]

I. 1. In regard to the Rule in the British Indian Code which is reproduced here, it is observed :—"It has been strongly represented that, for the protection of commercial enterprise, the rules relating to the attachment of any interest in partnership property should be assimilated to the English practice. At present, the Indian case-law on the subject is somewhat conflicting. It is thought that, at any rate in the commercial centres, the time has arrived for introducing the provisions of Section 23 of the Partnership Act, 1890 (53 & 54 Vict., c. 39) ; but how far they are likely to be useful when applied to the family business forming portion of the joint estate of Hindus is a matter which will require further consideration. The enactment in question has, therefore, been tentatively adopted as Clauses (1) to (3) to which the other Sub-Clauses embodying the simplified procedure directed by Or. XLVI, rr. 1 *a* and 1 *b*, of the Rules of the Supreme Court, are merely ancillary."— *India Gazette dated 21-12-1901, Pt. V.*

2. The words "or against the partners in the firm as such " at the end of Sub-section (1) show " that the operation of the Section is not ousted by the mere circumstance that the decree is passed, not against the firm, but against the partners constituting it, where these partners have been been sued as such."— *India Gazette dated 21-3-1903, Pt. V.*

II. Section 23 of the English Partnership Act, 1890 (53 and 54 Vict. c. 39) is as follows :—

" 23. (1) After the commencement of this Act (January 1st, 1891) a writ of execution shall not issue against any partnership property except on a judgment against the firm.

(2) The High Court, or a Judge thereof, or the Chancery Court of the County Palatine of Lancaster, or a County Court may, on the application by summons of any judgment-creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment

48. (1) Where a decree has been passed against a firm, execution may be granted—

Execution of decree against firm.

(a) against any property of the partnership;

(b) a gainst any person who has appeared in his own name under Rule 6 or Rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

(c) against any person who has been individually served as a partner with a summons and has failed to appear.

---

of the amount of the judgment-debt and interest thereon, and may by the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership, and direct all accounts and enquiries, and give all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment-creditor by the partner, or which the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged, or in case of a sale being directed, to purchase the same."

III. Rules 1-A and 1-B of Order 46 of the Rules of the Supreme Court, 1883, as amended, are as follow :—

"1-A. Every summons by a separate judgment-creditor of a partner for an order charging his interest in the partnership property and profits under Section 23 of the Partnership Act, 1890 (53 & 54 Vict. c. 39), and for such other orders as are thereby authorised to be made, shall be served in the case of a partnership other than a cost-book company on the judgment-debtor and his partners, or such of them as are within the jurisdiction or in the case of a cost-book company on the judgment-debtor and purser of the company; and such service shall be good service on all the partners or on the cost-book company as the case may be and all orders made on such summons shall be similarly served.

"1-B. Every application which shall be made by any partner of the judgment-debtor under the same Section shall be made by summons, and such summons shall be served in the case of a partnership other than a cost-book company on the judgment-creditor and on the judgment-debtor, and on such of the other partners as shall not concur in the application and as shall be within the jurisdiction, or in the case of a cost-book company on the judgment-creditor and on the judgment-debtor and on the purser of the company, and such service shall be good service on all the partners or on the cost-book company as the case may be and all orders made on such summons shall be similarly served."

[The cost-book company is a customary form of partnership for working mines in Devon and Corwall.]

Or. XXI, r. 48 [ = „ = *Or. XXI, r. 50* = En. Or. 48-A, r. 8]

I. In reproducing the corresponding Rule of the British Indian Code, the following Proviso to Sub-Rule (1) has been omitted:— "Provided that nothing in this Sub-Rule

(2) Where the decree holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in Sub-Rule (1), clauses (b) and (c), as being a partner in the firm, he may apply to the Court which passed the decree for leave, and where the liability is not disputed, such Court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

(3) Where the liability of any person has been tried and determined under Sub-rule (2), the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(4) Save as against any property of the partnership, a decree against a firm shall not release, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer.

---

shall be deemed to limit or otherwise affect the provisions of Section 247 of the Indian Contract Act, 1872."

II. Rule 8 of Order XLVIII-A of the Rules of the Supreme Court, 1883, is as follows :—

"8. Where a judgment or order is against a firm, execution may issue :

(a) Against any property of the partnership within the jurisdiction;

(b) Against any person who has appeared in his own name under Rule 5 or 6, or who has admitted on the pleadings that he is, or who has been adjudged to be a partner;

(c) Against any person who has been individually served, as a partner, with the writ of summons, and has failed to appear.

If the party who has obtained judgment or an order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a Judge for leave so to do; and the Court or Judge may give such leave if the liability be not disputed, or if such liability be disputed may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined. But except as against any property of the partnership a judgment against a firm shall not render liable, release or, otherwise affect any member thereof who was out of the jurisdiction when the writ was issued, and who has not appeared to the writ, unless he has been made a party to the action under Order XI, or has been served within the jurisdiction after the writ in the action was issued."

[Rule 5 referred to provides for appearance by persons sued in firm-name; and Rule 6 requires no appearance by person served, as having control or management of the partnership business. Order XI deals with 'Service out of the jurisdiction.']

49. Where the property is a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court.

Attachment of negotiable instruments.

50. Where the property to be attached is in the custody of any Court or public officer the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice is issued:

Attachment of property in custody of Court or public officer.

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

---

**Or. XXI, r. 49** [= S. 267 = *Or. XXI, r. 51*]

For Form of Order of attachment of Negotiable Instrument, see Appendix E, Form No. 20.

**Or. XXI, r. 50** [= S. 269 = *Or. XXI, r. 52*]

For Form of prohibitory order *re* Attachment, see Appendix E, Form No. 21.

**Case Law.**

1. Plaintiff, as the execution-creditor of a party who (it is alleged) is entitled to certain money deposited with the Sirkar, attached this deposit in execution of his decree by a prohibitory order. The Sirkar denied that any such money was due and refused to pay the same. The plaintiff, thereupon, obtained an order of the Court which passed the decree in his favour, to recover the money from the Sirkar authorities, and brought this suit on the basis of that order.

*Held*.—(1) Plaintiff has not, by mere attachment and order of the Munsiff, acquired such right to, or property in the deposit alleged to exist in the custody of first defendant—the Sirkar—as to entitle plaintiff to maintain a suit for recovery of the deposit.

(2) Plaintiff's right to bring a suit can only be acquired by purchase at a sale in pursuance of the attachment made.

There is nowhere in the Code any indication that the framers of the Code contemplated to treat the deposits in the hands of public officers, except the Courts of justice, in any other light than as a debt or movable property in the custody of third persons to be realised by the judgment-creditors in the ordinary mode provided by the Code in respect of such debts or movable property, namely, by sale. It is noteworthy that Section 269, while it lays down that the attachment of property deposited in the custody of any Court or public officer should be in the same mode, that is, by notice, has by its proviso conferring the power of deciding questions of title to such property on the

Courts alone, impliedly left the deposits in the hands of public officers, to be governed by the ordinary provisions of law applicable to attached property generally.

The order of the Munsiff's Court, in the case, was not one which could have the effect of transferring to the plaintiff the right to recover the deposit (F. B.).—

**10 T. L. R.**, *128.*

Rel.—36 T. L. R , 56.

**2.** It is the duty of the Court, on an application to attach movables in the hands of any public officer, in the execution of a decree, to satisfy itself that the movables so sought to be attached, belonged to, or were delivered to, the decree-debtor. The duty of the officer to whom a prohibitory notice under Section 269 (Section 221 old) is issued, is to hold the movables in his official custody, subject to the further order of that Court. It is not the business of the latter officer to enquire whether the movables belonged to the debtors or not: It is not competent to him to disregard the notice because, in his opinion, the order was not rightly issued or that the Court did not make proper enquiries about the ownership of the movables before the issue of the notice. Section 269 (Section 221 old) requires public officers who get prohibitory notices, without regard to any right asserted or proved to the articles in their custody by any person, to hold them subject to the further order of the Court, and should they, however, entertain any doubt about the propriety of the order or of the title of the judgment-creditor to have the articles attached, they should simply refer the party aggrieved or affected by the notice, to the Court which issued the same, keeping the articles in their custody pending the further instructions of that Court. As the defendant (Dewan Peishkar in the case) took upon himself the responsibility of disregarding a legal attachment of Court by ordering his subordinate to hand over the movables to a third party, he is certainly liable civilly for the consequences that followed from that act.— **10 T. L. R.**, *178.*

**3.** A District Judge rejected the Sirkar's application for payment of Court fees out of the funds deposited in Court as maintenance to the credit of a pauper plaintiff on the grounds that (1) the decree in the pauper suit awarding the plaintiff's claim for maintenance did not expressly direct the payment of the Court fees to the Sirkar, and (2) the Sirkar's application was barred by lapse of time.

*Held.*—(1) The absence of the words "the Sirkar do get the costs" in the decree which has calculated the amount of Court fees as provided by Section 396, C. P. C., [ = Or. XXXIII, r. 10] and directed the plaintiff to pay the same does not destroy the Sirkar's right to realise the Court fees.

The Sirkar's right to realise the Court-fee in pauper suits is a statutory right expressly conferred by Section 396 ; and it is the prerogative of the Sirkar to claim fees as a first charge.

(2) The application of the Sirkar for payment out of the fund in Court is not to be viewed as an application for execution of a decree to which the limitation period of three years is applicable.

The Sirkar has the first claim to the proceeds of a pauper suit to the extent of the amount of Court fee that would have been payable at the institution of the suit, had the plaintiff not been a pauper ; and what the Court had to do in the case was to proceed under Section 269, C. P. C., and to determine the question of priority as between the Sirkar and the representative of the deceased plaintiff who contested the Sirkar's claim.— **18 T. L. R.**, *3.*

**4.** The word "Court" in Section 269, Civil Procedure Code, does not merely denote a Civil Court but includes also a Criminal Court. Where property which is the subject of attachment by a Civil Court is in the custody of a Criminal Court, it is the Criminal Court, and not the execution Court, that has jurisdiction to determine any question of title or priority between the

**51.** (1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made—

Attachment of decrees.

(*a*) if the decrees were passed by the same Court, then by order of such Court,

---

decree-holder and another claimant, and such Criminal Court cannot by a provisional order, abdicate the jurisdiction in favour of the execution Court.

The preamble to an Act cannot be resorted to for the purpose of limiting its meaning unless there are strong words in the preamble indicating the intention of the Legislature to control the effect of the enacting portion and if on a review of the whole Act a wider intention than that expressed in the preamble appears to be the real one, effect is to be given to it notwithstanding the less extensive import of the preamble.— **27 T. L. R.**, *123* (= **2 T. L. J.**, *232*).

**5.** An order under the proviso to Section 269 of the Code of Civil Procedure passed by a Magistrate after investigating a claim to thondi articles attached in execution of a decree of a Civil Court, is one to which the provisions of Sections 275 to 280 [Or. XXI, rr. 56-61] of the Code apply. No revision lies ordinarily against such order, as the Legislature has provided a remedy by suit in Section 280.

The fact that the order was passed by a Criminal Court and not by a Civil Court does not make any difference.— **28 T. L. R.**, *209* ( = **3 T. L. J.**, *169*).

**6.** Where the attaching Court and the custody Court are the same, the principle of Section 269, C. P. C., must apply. Having regard to the form of attachment prescribed in that Section, it appears necessary when the attaching Court and the custody Court are the same, that an order should be made by the Court as attaching Court for transferring the money from the suit in which it came into Court to the suit in which the attachment took place.

"The order 'attach' appears to be sufficient, though of course some record of the attachment must be placed among the records of the suit to the credit of which the money is lying." The order of attachment, however, does not of itself effect a transfer to the credit of the suit in which the attachment is made. Unless the Court as attaching Court has directed the money to be paid over to itself, the money remains in the hands of the custody Court subject to the further orders of the attaching Court.— **37 T. L. R.**, *305* (= **11 T. L. J.**, *343*).

**7.** The Code of Civil Procedure does not recognise an anticipatory attachment of money expected to reach the hands of a public officer. The attachment contemplated by law is restricted only to money actually in his hands. Anticipatory attachments are contrary to law.— **12 T. L. J.**, *204*.

**8.** See also—

Sec. 52.—**6 T. L. R.**, *81*.
**6 T. L. R. App.**, *9*.
" 55.—**18 T. L. J.**, *1391*.

(b) if the decree sought to be attached was passed by another Court, then by the issue to such other Court of a notice by the Court which passed the decree sought to be executed, requesting such other Court to stay the execution of its decree unless and until—

(i) the Court which passed the decree sought to be executed cancels the notice, or

(ii) the holder of the decree sought to be executed or his judgment-debtor applies to the Court receiving such notice to execute its own decree, and,

(c) if the decree sought to be attached has been sent for execution to another Court, the Court which passed the decree shall send a copy of the said notice to the former Court, and thereupon the provisions of sub-clause (b) shall apply in the same manner as if the former Court has passed the decree and the said notice has been sent to it by the Court which issued it.

(2) Where a Court makes an order under clause (a) of Sub-rule (1), or receives an application under sub-head (ii) of clause (b) of the said Sub-rule, it shall, on the application of the creditor who has attached the decree or his judgment-debtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

(3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in Sub-rule (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

---

**Or. XXI, r. 51** [= S. 270=*Or. XXI, r. 53*]

I. The corresponding Section of Regulation II of 1065 ran as follows:—

"270. *Attachment of decree for money.*—If the property be a decree for money, passed by the Court which passed the decree sought to be executed, the attachment shall be made by an order of the Court directing the proceeds of the former decree to be applied in satisfaction of the latter decree.

If the property be a decree for money passed by any other Court, the attachment shall be made by a notice in writing to such

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in Sub-rule (1), the attachment shall be made, by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and where such decree has been passed by any other Court, also by sending to such other Court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent.

(5) The holder of a decree attached under this Rule shall give the Court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this Rule shall give notice of such order to the judgment-debtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order after receipt of notice thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

---

Court under the hand of the Judge of the Court which passed the decree sought to be executed, requesting the former Court to stay the execution of its decree until such notice is cancelled by the Court from which it was sent. The Court receiving such notice shall stay execution accordingly, unless and until—

(a) the Court which passed the decree sought to be executed cancels the notice, or

(b) the holder of the decree sought to be executed applies to the Court receiving such notice to execute its own decree.

On receiving such application, the Court shall proceed to execute the decree and apply the proceeds in satisfaction of the decree sought to be executed.

*Attachment of other decrees.*—In the case of all other decrees, the attachment shall be made by a notice in writing under the hand of the Judge of the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, when such decree has been passed by any other Court, also by sending to such Court a like notice in writing to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent. Every Court receiving such notice shall give effect to the same until it is so cancelled.

*Decree-holders to give information.*—The holder of any decree attached under this Section shall be bound to give the Court executing the same such information and aid as may be reasonably required."

II. For Form of notice of attachment of a decree to the Court which passed it, see Appendix E, Form No. 22.

For Form of Notice ot attachment of a decree to the holder of the decree, see Appendix E, Form No. 23.

**Case Law.**

**1.** Section 270, clause (*b*), of the Civil Procedure Code enables an attaching creditor, by mere attachment, to execute a money-decree attached. Nowhere does the Code provide for sale of decrees. Such sales are unauthorised ; and therefore the purchase of a money-decree in execution is invalid and inoperative.—

**11 T. L. R.,** *193.*

Fol.—12 T. L. R., 183.

**2.** Where a judgment-creditor (plaintiff) attached and purchased a hypothecation lien held by his debtors after being, on his own motion, made a party to a decree that the debtors themselves had obtained against their hypothecator prior to plaintiff's attachment, moved for execution of the latter decree against the hypothecators of plaintiff's decree-debtors:

*Held.*—When plaintiff's decree-debtors obtained the decree against their hypotheecators, the former's rights under the hypothecation became merged in the decree, and plaintiff's attachment of the hypotheca was null and void. He had acquired no rights by his purchase, and the making him a party to the decree was wrong.

The execution of the whole decree still remained with the hypothecatees (defendants).

Under Section 270 of the Civil Procedure Code a person executing a decree by attaching another decree is not required to bring the latter to sale, an attachment duly made being sufficient to give the execution creditor the right to receive the money due under the decree that has been attached.— **12 T. L. R.,** *183.*

**3.** A obtained a decree against B in O.S. 318 of 1073. C obtained a decree against A in O. S. 389 of 1079 and attached the former decree on 1-4-1081. The last application under Section 218 to take a step in aid of execution of the decree in O. S. 318 was granted on 11-1-1078 and the records were received by the execution Court on 3-4-1078. C applied for execution of the decree in O. S. 318 on 21-3-1083, which application was dismissed as time-barred.

*Held.*—(1) In computing periods of limitation under Article 158, Schedule II, Clause 4, having regard to the hardships which a decree-holder will suffer, if the delay in th' transfer of records by the original Court, the miscarriage of the records in tran prevents the decree-holder applying ... second Court for execution within the limitation period, the words 'the date on which such order was carried out' therein, ought to be construed as including the date on which the records were received by the execution Court in cases of transmission of decrees for execution under Section 218, C. P. C., [new Sections 35-37].

(2) The attaching decree-holde s entitled to take all steps necessary or the realisation of the attached decree as if he were the decree-holder.

The second decree-holder was n attachment, entitled at once to apply or execution of the first decree. Rule 51 contemplates the right of the attaching creditor in every case to enforce execution of the decree he had attached. The second decree-holder becomes a 'representative' of the first decree-holder, as soon as first decree is attached, and he has only to apply as such representative to execute the first decree—*Vide* Sub-Rule (3) of this Rule. Under the Rule, even the first decree-holder is not prohibited from applying for execution. Sub-Rule (1), (b) (ii), allows both the decree-holders to apply for execution, and Sub-Rule (6) merely prohibits the first decree-holder from receiving payment of the first decree amount from or adjusting the first decree with, the judgment-debtor.

(3) Section 15 of t' Limitation Regulation was intended tc ve the hardships

of litigants who are under a disqualification to make a necessary application by reason of a prohibitory order, and not to extend the time in favour of persons who have not been so prohibited, but who are entitled to make the application themselves as representing the rights of the prohibited persons.

(4) Section 270 does not prohibit the first decree-holder from applying for execution but only directs the first Court to "stay execution," and it is doubtful whether ...en the first decree-holder could obtain ...xtension of time for execution, simply ...use the first decree-holder failed to pay ... decree-debt due by him to the second decree-holder, and owing to such negligence or breach of his obligation to pay up the second decree, the second decree-holder attached the first decree. The Legislature cannot have intended to extend the time for execution of the first decree, simply because the first decree-hoder happend... to be himself a judgment-debtor in anoth... ...se.— **24 T. L. R.**, *12.*

Appr.—26 T. L. R., 83
(=1 T. L. J., 284).

**4.** An ...tachment of a decree for money under Sec...n 270 C. P. C. stands till the notice requ...sting the stay of execution is cancelled.— **10 T. L. J.**, *275.*

**5.** The appellant, a creditor, applied for an attachment of the decree in the case on 21-5-1095. This was ordered and made conditional on his producing a copy of the decree. On the same day, the decree-holder petitioned to the Court to strike the case off the file, the decree-debt having been paid. Notice was ordered on this to the appellant. This application was, however, dismissed for non-payment of process fee. In the meantime, the appellant produced a copy of the decree on 10-6-1095, and the notice of attachment was issued on 25-6-1095 and returned after substituted service on 29-6-1095. The appellant then applied to the Court for execut... the decree. The respondent-judgme... ...tor, objected thereto, setting up a discharge of the decretal amount to his decree-holder on 21-5-1095. Both the lower Courts upheld the plea of discharge. The appeal was against this decision.

*Held.*—Under Section 270 [=Or. XXI, r. 51 ], an attachment of a decree if made in execution of a decree passed by the same Court has to be effected by the order of that Court to that effect. Section 273 [new Section 56] declares payment to the judgment-debtor of any debt or money void as against all claims enforceable under the attachment. By the substitution in the new Code of the expression "contrary to such attachment" in place of "during the continuance of the attachment" in the old Code, no substantial change has been effected, the words now used being only more comprehensive and effective. Attachment becomes effectual as soon as the order relating thereto is passed, and non-service of the notice regarding the same on the judgment-debtor is perfectly inmaterial, as the Code does not lay down that such notice is necessary to effectuate attachments of this kind. Thus, if the order of attachment had as a matter of fact been passed, payments out of Court made thereafter could not bind the attaching creditor. In the case, the attachment should be held to have become operative on 21-5-1095 and not on 29-5-1095 as assumed by the judge below.

When the transaction which is *prima facie* valid is sought to be invalidated, by reason of an attachment, the burden of showing that the transaction in question took place is upon the attaching-creditor.

Of course, a presumption will arise as regards judicial acts that they should have been done at the earliest point of time on the dates they purport to have been performed.

The order of attachment is a judicial act, and therefore the above presumption will arise with respect to the same, though it is only a rebuttable one.

52. (1) Where the property is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.

Attachment of immovable property.

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court-house, and also, where the property is land paying revenue to the Government, in the office of the Tahsildar of the Taluk in which the land is situate.

---

The provisions in Section 255 [=Or. XXI, r. 2] clearly show that a distinction had been kept in view between the "certifying" and "recording" contemplated in the Section. The word "certify" in paragraph 3 of Section 255 related to cases of appraisal by the decree-holder with respect to adjustment or payment and the word "record" to the applications of the judgment-debtor in such cases.

A certificate by the decree-holder is sufficient to enable the judgment-debtor to plead that the decree has been satisfied.—
**18 T. L. J.,** ***207.***

**6.** See also—

Sec. 41.— **13 T. L. R.,** ***211.***

,, 52.— **6 T. L. R.,** ***81.***

Or. XXI. r. 2.—**18 T. L. R.,** ***205.***

**Or. XXI, r. 52** [ = S. 271 = *Or. XXI, r. 54*]

I. 1. In Sub-Rule (1) corresponding to the first Para of Section 271, the words "from taking any benefit from such transfer or charge" have been substituted for the words "from receiving the same from him by purchase, gift or otherwise."

**2.** The remaining two Paras of the old Section were as follow:—

"The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be fixed up in a conspicuous part of the property and of the Court-house.

When the property is land paying revenue to Government, a copy of the order shall also be fixed up in the office of the Tahsildar of the Taluk in which the land is situate."

**3.** See Note under Rule 65, ***Infra.***

II. For Form of Prohibitory order *re* attachment in execution, see Appendix E, Form No. 24.

**Case Law.**

**1.** Section 286 of the Civil Procedure Code [=Or. XXI, r. 65] does not dispense with the affixing of copy of proclamation of sale of immovable property on the spot, and the omission thereof is a material irregularity and vitiates the sale. The publication by means of affixing such copies in the Court-house and the Tahsildar's office referred to in the Section, should be made only after publication on the spot, which must be simultaneous with the proclamation of sale by beat of drum.

In the case of a proclamation of order of attachment under Section 271 of the Civil Procedure Code, the affixing of copies in the

53. Where—

Removal of attachment after satisfaction of decree.

(a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or

(b) satisfaction of the decree is otherwise made through the Court or certified to the Court, or

(c) the decree is set aside or reversed,

the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding Rule.

---

Court-house and the Tahsildar's office could be done even prior to attachment of the property.— **13 T. L. R. App.**, *9.*

Fol.—21 T. L. R., 157,
K. P., 260.

**2.** An attachment of immovable property does not become effective when the order is made, but only when the attachment is effected.— **19 T. L. J.**, *743.*

**3.** See also—

Sec. 52.—**6 T. L. R.**, *81.*
" 56.—**38 T. L. R.**, *288*
(=**12 T. L. J.**, *197*).
Or. XXI, r. 28.—
**11 T. L. R.**, *202.*
" r. 44.—**8 T. L. R., App.**, *54.*
**20 T. L. R.**, *165.*
**8 T. L. J.**, *354.*

**Or. XXI, r. 53** [=S. 272=*Or. XXI, r. 55* ]

**1.** The corresponding Section of Regulation II of 1065 was as follows :

"272. *Order for withdrawal of attachment after satisfaction of decree.*—If the amount decreed with costs and all charges and expenses resulting from the attachment of any property be paid into Court, or if satisfaction of the decree be otherwise made through the Court, or if the decree is set aside or reversed, an order shall be issued on the application of any person interested in the property, for the withdrawal of the attachment.

If the judgment-creditor fails to bring to sale any property attached in execution of a decree for money within three years from the date of the attachment, the Court may order the withdrawal of attachment, unless, for any special reasons to be recorded, it considers that the attachment should continue.

*Explanation.*—Pendency of a claim-petition or any objection to the sale shall be a sufficient reason for the continuance of the attachment after the lapse of three years."

**2.** The second Para with the Explanation were added to the provision in Section 275 of the Indian Code of 1882 which was adopted as the first Para. The Statement of Objects and Reasons said :—"44. Now, property attached in execution of decrees is not often brought to sale within a reasonable time ; and the execution of decrees is thereby delayed. To compel creditors to be diligent it is necessary to prescribe a limit within which the property should be brought to sale."

**Case Law.**

**1.** So far as the judgment-debtor is concerned, nothing short of the satisfaction of

the decree, in execution of which the attachment was made, would release the property from attachment. The Civil Procedure Code contains no provision for the release of attached property, if not brought to sale within a prescribed time.—

**7 T. L. R. App., *57*.**

Fol.—11 T. L. R., 13.

**2.** Plaintiff is the decree-holder in O. S. No. 67 of 997 and the defendant the decree-holder in No. 669 of 1053—both decrees being against the members of the same family. In execution of the former decree, plaintiff attached in 1022 certain properties of his judgment-debtor. No sale followed this attachment. In Kanni 1057, the defendant, in execution of his decree, caused the attachment of the same properties and brought about the sale of them. In the meantime, plaintiff applied for re-attachment of the properties which was granted and attachment was made in Thulam 1058. Plaintiff applied to have the assets realized paid to him as the first attaching creditor. An order was accordingly made, but the defendant got that set aside on the ground that plaintiff was not the first attaching creditor. The sale-proceeds were then paid to the defendant. The plaintiff files the suit to have the order in favour of the defendant cancelled and the money recovered from him.

The first contention raised on behalf of the defendant was that the execution of the plaintiff's decree (O. S. No. 67 of 997) having become barred on the date of the sale of the attached properties, plaintiff had no *locus standi* to apply for the sale proceeds.

*Held.*—An attachment of property made in execution of a decree, continues in force, under the old Limitation Regulation until it is removed or superseded. It operates *de die in diem* as process of execution upon the decree, and at any time further process for the sale of the property might be issued upon the attachment. The attachment made in execution of plaintiff's decree in 1022 continued in force up to 1057 when the property, the sale proceeds of which form the subject-matter of this suit, was sold. Plaintiff's claim is not barred. Being the first attaching creditor, he was under the law in force at the date of sale, entitled to be paid first (F. B.).—

**11 T. L. R., *13*.**

Ref.—33 T. L. R., 197 (=7 T. L. J., 367).
19 T. L. J., 906.

**3.** Section 272, Para 2, applies only to attachments made "in execution of a decree" and not to attachments made prior to judgment: and hence an attachment of the latter kind cannot be withdrawn under the Section on the ground that the decree-holder has failed within three years of the attachment to bring to sale the property attached.

The expression "attached in execution of a decree for money" cannot apply to attachments made before judgment. Such an attachment may no doubt be availed by the decree-holder, on fulfilment of certain preliminary conditions, for realisation of his money in the event of his suit being ultimately decreed. But it is essentially different in character from an attachment made after decree. "An attachment before judgment does not, for all purposes, stand on the same footing as an attachment in execution proceedings. This, indeed, is obvious from first principles. The attachment does not of necessity ensure the property to the person who attaches it. He becomes entitled to proceed against it only if he eventually gets a decree; it is not competent to him to proceed against the property attached unless he has also taken the preliminary steps which the law requires for its enforcement; in other words, he must apply for execution just like any other creditor." (38 Cal., 448). "An attachment prior to a decree is not an attachment for the enforcement of the decree; but it is a step taken merely for the purpose of preventing the debtor from delaying or

54. Where the property attached is current coin or currency notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

Order for payment of coin or currency notes to party entitled under decree.

55. Where any property has been attached in execution of a decree but by reason of the decree-holder's default the Court is unable to proceed further with the application for execution, it shall either dismiss the application or for any sufficient reason adjourn the proceedings to a future date. Upon the dismissal of such application the attachment shall cease.

Determination of attachment.

---

obstructing such enforcement when the decree subsequently passed shall be sought to be executed. An attachment after decree is, on the other hand, an attachment made for the immediate purpose of carrying the decree into execution and it presupposes an application on the part of the decree-holder to have his decree executed." (4 B. L. R., 63).— **6 T. L. J.**, *252*.

**4.** The question whether there has been an abandonment of the previous attachment by reason of the subsequent attachment has to be decided from the intention of the parties, as the placing of the second attachment could not *ipso facto* conclusively make out such an abandonment.

No presumption in favour of such abandonment could arise from such attachment alone.

Though in cases of attachment before judgment, a second attachment after judgment is not necessary under law for taking further steps in execution allowed under the Code, the effecting of such second attachment after judgment does not appear to be uncommon here as well as in British India. Under these circumstances, the prior attachment could not be deemed to have been abandoned by the subsequent attachment after decree.—

**43 T. L. R.**, *252*

(= **17 T. L. J.**, *625*).

5. See also—

Sec. 41.— **13 T. L. R.**, *29*,

„ 56.— **12 T. L. R.**, *23*,

**16 T. L. R.**, *149*.

**8 T. L. J.**, *382*.

**Or. XXI, r. 54** [=S. 274= *Or. XXI, r. 56*]

I. For Form of Order for payment to plaintiff of money, &c., in the hands of third party, see Appendix E, Form No. 25.

II. Section 274 applies to property attached by actual seizure and as such at the immediate disposal of the Court executing the decree. Mere notice to a public officer is insufficient to constitute actual seizure of property in the custody of a public officer. The Section evidently contemplates an immediate payment, and no coins or currency notes in the hands of parties over whom the Courts have no control and who dispute the right and title of the judgment-creditor and debtor to such money or currency notes, can be said to be capable of immediate payment. Were this Section to be held applicable to coins and currency notes in the hands of third parties to which the judgment-debtors may lay a claim, the Courts would be made the medium of perpetrating gross injustice upon such third parties who may not have an opportunity of stating and proving their claims and objections to the attachment, for the Section enables the Court to direct payment even a few minutes after the attachment.— **10 T. L. R.**, *128*.

*Investigation of claims and objections.*

56. (1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit:

Investigation of claims to, and objections to attachment of, attached property.

Provided that no such investigation shall be made where the Court considers that the claim or objectinn was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

Postponement of sale.

---

**Or. XXI, r. 55** [=,, = *Or. XXI, r. 57*]

I. The Indian Special Committee observe :—"The purpose of this Rule is to put an end to doubts which from time to time have arisen as to the continuance of an attachment by reason of the practice of 'striking off proceedings' or 'removing proceedings from the file' for which there is no justification in the Code."

II. It has been held that the Rule does not apply to attachments made before judgment. "It makes an attachment cease on the dismissal of an execution application only if that attachment had been made 'in execution of the decree,' and not when it had been made before judgment in view to a possible execution of a decree which might probably be passed thereafter." (26 M. L. J., 215).— **6 T. L. J.**, *252*.

**Case Law.**

Order XXI, Rule 55, is not retrospective in its operation. The right of the decree-holder to have the properties of his judgment-debtor sold without a fresh attachment is a vested one. Under the old Code, the decree-holder was entitled to move for the sale of the judgment-debtor's properties which had been attached already without a fresh attachment, even in cases where his application for execution had been dismissed. This would clearly constitute a right which is vested in the decree-holder and a later enactment cannot be allowed to deprive him of such right.— **19 T. L. J.**, *732*.

**Or. XXI, r. 56** [=S. 275=*Or. XXI, r. 58*]

I. The corresponding Section 275 of Regulation II of 1065 did not contain the Proviso now found in Sub-Rule (1). Section 275 was a reproduction of Section 278 of the Indian Code of 1882, *minus* the Proviso. The reason for the omission was thus explained in the Statement of Objects and Reasons':—"Proviso to Section 278 is omitted as, in the Limitation Bill, a limit is prescribed within which the claim or objection should be preferred. Where the claim or objection is brought forward after the lapse of the prescribed time, it shall be rejected on the ground that it is barred. Instead of leaving it to the discretion of the Court to hear an objection if it considers that it was brought within a reasonable time, and

thereby introducing an element of uncertainty in the administration of law, it seems highly desirable that the law itself should fix a reasonable time, after the lapse of which no claims should be received for summary adjudication."

II. For Form of Notice to attaching creditor, see Appendix E, Form No. 26.

III. Sections 275 to 280 of Regulation II of 1065 embody the provisions contained in Sections 230 and 231 of Regulation II of 1037. These latter Sections are subjoined for reference in connection with the cases under them, given below.

"230. *How claims and objections to sale of attached property are to be investigated.*—In the event of any claim being preferred to, or objection offered against the sale of lands or any other immovable or movable property which may have been attached in execution of a decree or under any order for attachment passed before judgment, as not liable to be sold in execution of a decree against the defendant, the Court shall, subject to the proviso contained in the next succeeding Section, proceed to investigate the same with the like powers as if the claimant had been originally made a defendant in the suit, and also with such powers as regards the summoning of the original defendant as are contained in Section 204. And if it shall appear to the satisfaction of the Court that the land or other immovable or movable property was not in the possession of the party against whom execution is sought, or of some other person in trust for him, or in the occupancy of ryots or cultivators or other persons paying rent to him at the time when the property was attached, or that, being in the possession of the party himself at such time, it was so in his possession not on his own account or as his own property, but on account of or in trust for some other person, the Court shall pass an order for releasing the said property from attachment. But if it shall appear to the satisfaction of the Court that the land or other immovable or movable property was in possession of the party against whom execution is sought as his own property, and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of ryots or cultivators or other persons paying rent to him at the time when the property was attached, the Court shall disallow the claim. The order which may be passed by the Court under this Section shall not be subject to appeal, but the party against whom the order may be given shall be at liberty to bring a suit to establish his right at any time within one year from the date of the order.

"231. *Claims and objections shall be preferred at the earliest opportunity.*—The claim or objection shall be made at the earliest opportunity to the Court which shall have ordered the attachment; and if the property to which the claim or objection applies, shall have been advertised for sale, the sale may (if it appears necessary) be postponed for the purpose of making the investigation mentioned in the last preceding Section. Provided that no such investigation shall be made if it appear that the making of the claim or objection was designedly and unnecessarily delayed, with a view to obstruct the ends of justice. The order disallowing the investigation shall not be subject to appeal, and the claimant shall be left to prosecute his claim by a regular suit."

IV. The Sections of the old Regulation have been adopted with some modifications, as Rules 56 to 61 of this Order. In connection with some of the cases under the old Sections given below, the effect of the changes introduced by the Rules has to be noted.

V. "Section 275 (Regn. II of 1065) compendiously indicates the scope of the claim or objection which it directs the Court to investigate. It is that the property attached is not liable to such attachment: and Sections 277 and 278 point out the real issue

to be decided by the Court: Was the attached property at the time of the attachment, in the possession of the judgment-debtor? If so, was it in his possession as his own property and not on account of any other person? If it was in the possession of some one other than the judgment-debtor, was such possession held in trust for the judgment-debtor or under him by one who, either as tenant or by virtue of some other relation, paid rent to him? If the answer to these issues be in the affirmative, the claim is to be disallowed. If, however, the possession of the judgment-debtor be found to have been on account of or in trust for another, or partly on his own account and partly on account of some other person, the order is to be one releasing the property from attachment either wholly or partially, as the Court thinks fit. Section 280 provides for a suit by the party against whom an order is passed under any of the preceding Sections 'to establish the right which he claims to the property in dispute', the order being made conclusive subject to the result of such suit.

The provision contained in Section 276 did not find a place in the earlier Regulation, II of 1037. There was, therefore, room for doubt whether a claimant who had no interest whatever in the attached property or possession thereof might not come forward and prove that the judgment-debtor had no possession or that, if he had, it was not on his own account. To remove the doubt, Act X of 1877 introduced Section 279 corresponding to Section 276. It, therefore, seems that the provision in Section 276 is meant only to exclude persons who cannot show any interest in the attached property or possession thereof, from the benefit of an enquiry under Sections 275 to 279. In other words, the claimant, before he can ask the Court to decide the questions indicated in Sections 277 and 278, must show, *in limine* either a title himself or *jus tertii* in which he has some interest. Shortly put, the claimant must satisfy the Court that he is not an absolute stranger to the attached property, but has such an interest therein as would justify his intervention to prevent the sale sought to be effected."

"The creditor acquires by a perfected attachment a right to realise his debt out of the attached property—a right which, in case of competition, will have priority to all the alienations made by the debtor subsequently to the date of the attachment.

"This right is a right in the thing, a real right, a right *in rem*, as opposed to a mere right against the person of the debtor, a personal right, a right *in personam*. The attachment imposes no personal obligation on the debtor over and above what has been imposed on him by the decree : but it restricts his power of free alienation of the attached property to the extent necessary to satisfy the decree. That is to say, from the moment of attachment the property becomes bound by the debt in the hands of those who take it from the debtor 'by sale, gift, mortgage or otherwise', and to this extent, becomes a security for the debt. In other words, the attachment gives rise to a real obligation and a correspondent *jus in re aliena*—an encumbrance, in that general sense in which the term encumbrance is used as equivalent to a *jus in re aliena*.

Attachment only prevents alienation, it does not confer title.

An attaching creditor has the right to redeem a prior mortgage. He has the right to apply for execution of the attached decree. The holder of a decree against a Hindu co-parcener can, by attaching the latter's interest in the co-parcenary property during his life-time prevent survivorship. An attaching creditor acquires a right to have the whole of the attached property applied in satisfaction of his debt, if no other creditors come forward; and, in any case, to have a rateable proportion so applied—a right which, if violated (*e. g.*, by removal of the attached property from the

*custodia legis*), will entitle the creditor to claim damages. An attaching decree-holder acquires by his attachment such an interest in the subject-matter of the attachment as would entitle him to be made a party to the appeal preferred against the decree attached."— **35 T. L. R.**, *54* (=**9 T. L. J.**, *256*).

### Case Law.

**1.** To exclude a party from his ordinary right to sue within 12 years, and to bring the case within the purview of Section 230 (Regulation II of 1037), there must be an actual adjudication under the provisions of that Section. An order that plaintiff could not proceed under those provisions is not such an adjudication.— **1 T. L. R.**, *93*.

**2.** To compel a claimant to sue within one year from the date of the order on his claim, there must have been an adjudication on the question of possession or no possession after investigation; and an order of the Court to strike off the claim petition without investigation, whether owing to the default of the claimant or otherwise, is not the order contemplated by Section 230 (Regulation II of 1037).

The dismissal of a claim for default of prosecution is not an order under this Section.— **3 T. L. R.**, *6*.

**3.** The limitation of one year provided for suits to set aside orders passed on claims referred under Section 230 (Regulation II of 1037) has been held to apply to cases in which the claim has been duly investigated, but where this has not been done, the claimant has twelve years.—**6 T. L. R.**, *114*.

**4.** Section 230 (Regulation II of 1037) does not authorize the members of a Marumakkathayam Tarwad to object to the attachment of Tarwad property in execution of decrees against their Karanavan, on the ground that the judgment-debt is not a charge on the Tarwad; and, therefore, the limitation for a suit to set aside such attachment is not one year.

The wording of the Section clearly shows that the objector or claimant must show that the judgment-debtor is not in possession of the property attached, *on his own account*, and that he has also no interest whatever in the said property. Every Karanavan is in possession of the Tarwad property *on his own account* and on account of his Seshakars. A Seshakaran objecting to the attachments made in execution of decrees against his Karanavan can only seek the release of the property on the ground that the judgment is not a charge on the Tarwad. The scope of investigation sanctioned by Section 230 does not permit the Court executing the decree to go into this question. The object of the Legislature in enacting this Section was to provide a summary remedy for those whose property is not *under any* circumstances liable to answer the demands against the judgment-debtor.— **7 T. L. R.**, *121*.

**5.** A party who has been in possession on his own account for more than 12 years, without any recognition of the claims of the judgment-debtor, is entitled, on the strength of such possession to an order releasing the property from attachment made in execution of a decree-debt, unless it is shown that the judgment-debtor has still a present right, title, or interest in the attached property. If the claims of a party have been time-barred, and are thus unenforceable, his bare right, if any, is valueless, and the purchaser who would stand in the shoes of such party, can derive no benefit whatever from the purchase. An attachment and sale of such valueless rights are not contemplated by the C. P. C. and before a property can be put up for sale it must be shown that the debtor has on it some present right, title or interest capable of valuation. When a person in possession of porperty sold in execution as being the property of another, sues to establish his title to such property, the burden of proof is not upon him but upon the purchaser, and on failure of proof of title in the judgment-debtor, plaintiff is entitled to a decree

declaratory of his right to the property as against the defendant.— **7 T. L. R.**, *134.*

**6.** Where an application is made to set aside an attachment of property in the possession of the judgment-debtor, on the ground that the debt was not contracted *for purposes which would make it a charge on such property*, and involving such other questions as the Court is not competent to try, and the execution Court refers the application to a regular suit, Section 230 (Regulation II of 1037) has no application and the period of limitation applicable to cases of that nature is 12 years.—

**7 T. L. R.**, *173.*

**7.** Certain property was attached in execution of a decree against a junior member of a Marumakkathayam Tarwad. The Karanavan and senior Anandaravan objected to the attachment on the ground that the property belonged to the Tarwad and was not liable to be attached for a junior member's personal debt. The Court executing the decree found that the Tarwad had no right to the property. The property was subsequently sold in auction, and a suit was brought by a female member of the Tarwad to set aside the sale one year after the date of the order dismissing the Karanavan's claim.

*Held.*—When a claim is made under Section 230 (Regulation II of 1037) and on proper investigation it is disallowed, the sale of the property claimed which may take place subsequently, is subject to the result of any suit that the unsuccessful claimant may bring within one year from the date of the disallowance of the claim.

Therefore, the suit is barred by one year's limitation under Article 7 of the Limitation Regulation.

Article 8 does not apply, as the rights of the Tarwad which the Karanavan represented in the proceedings under this Section were unaffected by the sale.

The act of the Karanavan, in the absence of fraud or collusion, is the act of the whole Tarwad ; and a judgment or decree passed in a suit brought by or against a Karanavan, binds all his Seshakars and operates as *res judicata*. An order under this Section has the same force of *res judicata* as a decree in a regular suit.— **9 T. L. R.**, *78.*

Ref.- 21 T. L. R., 41.

**8.** In execution of a money decree against some junior members of a Tarwad, certain property belonging thereto was attached, whereon the Karanavan and others preferred a claim which was allowed on the ground that Tarwad property was not liable for the debt. The decree was subsequently assigned, and the assignee attached certain other properties belonging to the Tarwad, which were—no claim having been preferred—sold and purchased by third parties. The suit was brought to set aside this sale. The Munsiff dismissed the suit, but the Zillah Judge held that the order on the claim petition debarred execution of the decree against the Tarwad properties.

*Held.*—The order on the claim petition was not authorised by law. It is not within the competence of a Court executing a decree to determine whether that decree is binding on the judgment-debtors' Tarwad, or in other words, whether the judgment-debtors were competent to borrow the decree-debt on behalf of their family. Such a Court cannot, under the provisions of Section 230 (Regulation II of 1037) entertain and decide the question whether the decree was passed against the debtors in their representative or individual capacity. It cannot, by any order passed in execution, limit or modify the operation of the decree. Its functions in executing a decree are purely ministerial. Under Section 230, the Court has simply to consider whether the attached property was or was not in the possession of the judgment-debtors or of any other person on behalf of them, at the time of the attachment. Such an order, under no circumstances can operate as *res judicata* or as estoppel against the decree-holder in

attaching any other property belonging, or alleged to belong, to the debtors.

An order on a claim petition will bind and affect only parties thereto and the subject-matter thereof; the sole effect of such an order being simply to preclude the judgment-creditor from again attaching the property released from attachment thereby without establishing its liability to be sold for the decree-debt by a regular suit.—
**10 T. L. R.**, *64*.

Fol.—18 T. L. R., 200.

**9.** A decree was passed against two junior members of an undivided Hindu families. They died soon after the decree was passed, and their respective fathers were made parties to execution proceedings. On the decree-holder attaching the immovable family properties, a stranger, alleging himself to be the alienee of the judgment-debtor's father and brothers preferred a claim which was rejected by the Court below.

*Held.*—No appeal lay from the said order, and the claim of one who is not a party to the execution proceedings cannot be held to fall under Section 238, C. P. C. [new Section 40]. Such a clain falls under Section 275, and therefore, the only course open to the aggrieved party is to file a separate suit to establish his right as directed by Section 280 [= Or. XXI, r. 61].— **1 S. D.**, *1*.

**10.** An objection by the junior member of a Marumakkathayam Tarwad to the attachment of Tarwad property in execution of a decree against his Karanavan, who is alive and on record as judgment-debtor, on the ground that the debt is fictitious and therefore not binding on the Tarwad, falls under Section 275 C. P. C., and not under Section 238 [new Section 40].

It was argued that if the petitions were claims under Section 275, orders rejecting them would be final, and the appeals were therefore incompetent. But the case was one where the lower Court had erroneously failed to exercise a jurisdiction vested in it by law. The High Court dealt with the matter in the exercise of its revisional jurisdiction.— **6 T. L. J.**, *151*.

Overruled.—40 T. L. R., 151.

**11.** Objection to attachment by the person impleaded in the place of the deceased Karanavan judgment-debtor on the ground that the decree was not binding on the Tarwad falls within the scope of Section 238 C. P. C. [new Section 40], and not under Section 275.— **14 T. L. J.**, *68*.

Ref.—19 T. L. J., 627.

**12.** Where a judgment-debtor raises a claim or objection on behalf of third parties who are not represented before the Court, the order thereon falls under Section 275 and not under Section 238 [new Section 40]. Therefore, where a decree is obtained against the Tarwad properties of the plaintiffs and certain properties are attached in execution, an order passed on the petition of the plaintiffs to raise the attachment on the ground that the properties attached are the Makkathayom properties of the plaintiffs falls under Section 275 and not under Section 238.

It is open to the Appellate Court to go into the question of *res judicata* or any other question of law which may be raised for the first time in appeal provided it does not require the proof of any facts.—
**19 T. L. J.**, *481*.

**13.** See also—

Sec. 36.—**39 T. L. R.**, *211*
( = **14 T. L. J.**, *207*).

,, 40.—**40 T. L. R.**, *151*.
**19 T. L. J.**, *318*.

Or. XXI, r. 57.—
**35 T. L. R.**, *54*
(= **9 T. L. J.**, *256*).

57. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

Evidence to be adduced by claimant.

58. Where upon the said investigation the Court is satisfied that for the reason stated in the claim or objection such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

Release of property from attachment.

---

**Or. XXI, r. 57** [= S. 276=*Or. XXI, r. 59*]

**Case Law.**

The question was whether an attaching creditor under the Civil Procedure Code could be deemed to have acquired any interest in the property attached, and, if so, whether such interest was sufficient to sustain a claim under Section 276 of the Code.

*Held.*— (1) The statutory effect of an attachment duly intimated and made known in the manner provided by the Civil Procedure Code, is to render void, as against all claims enforceable under the attachment, any private alienation by the debtor of the attached property. This restriction on the power of free disposition has the effect of creating a real obligation which is correlative to a right *in rem* vested in the attaching creditor. This right being in and over another's property is a right *in re aliena*—an encumbrance in the generic sense; and, being created for the purpose of securing satisfaction of the decree, it may be called a lien or charge, though its operation is much less extensive than that of a charge as ordinarily understood. It is, however, an interest in the attached property sufficiently substantial to entitle the person in whom it is vested (namely, the attaching creditor) to claim an investigation under Sections 275 to 279, of the Code.

(2) The above observations hold equally good in the case of an attachment before judgment as in the case of one after judgment.

"The most common form of judicial liens is an attachment of the debtor's property in execution of a decree against him. But such attachment, though it avoids as against the attachimg creditor any alienation of the property made by the debtor during its continuance, does not create any interest in the creditor which enables him to be paid out of the property attached in priority to other creditors. Though an attachment does not confer any title, but only prevents alienations, it cannot be said that it creates no kind of charge upon the property."

Looking at the various Sections (276-280) as a whole, there can be little doubt that the Legislature intended that the same effect should be given to an attachment before judgment as is expressly provided in Section 276 in respect to an attachment in execution of a decree.—**35 T. L. R., *54***
**(=9 T. L. J., *256*).**

Dist.—36 T. L. R., 56.
Ref.—18 T. L. J., 651.

59. Where the Court is satisfied that the property was, at the time it was attached, in the possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

Disallowance of claim to property attached.

60. Where the Court is satisfied that the property is subject to a mortgage or charge in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or charge.

Continuance of attachment subject to claim of incumbrancer.

61. Where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

Saving of suits to establish right to attached property.

---

**Or. XXI, r. 58** [=S. 277=*Or. XXI, r. 60*]

**Case Law.**

**1.** A property was attached, in respect of which the appellant's mother had a maintenance right. Her prayer was that the attachment placed on that property should be raised so far as it affected her interests. The order passed on the claim petition releasing the attachment could be held to operate only on the interest which the appellant's mother claimed in respect of the property. In other respects, the attachment must be considered to have been in force. Therefore, no fresh attachment before sale was necessary.

**39 T. L. R.,** *211*
(**= 14 T. L. J.,** *207*).

**2.** See also—

Or. XXI, r. 56.—**10 T. L. R.,** *64*.
" " r. 57.—**35 T. L. R.,** *54*
(**=9 T. L. J.,** *256*).

**Or. XXI, r. 59** [=S. 278=*Or. XXI, r. 61*]

See Note under Rule 56 *Supra*.

**Or. XXI, r. 60** [= S. 279=*Or. XXI, r. 62*]

**Or. XXI, r. 61** [= S. 280=*Or. XXI, r. 63*]

I. The corresponding Section of the old Regulation was as follows :—

"280. *Saving of suits to establish right to attached property.*—The party against whom an order under Section 277, 278, or 279 is passed may institute a suit to establish the right which he claims to the property in dispute, but subject to the result of such suit, if any, the order shall be conclusive."

II. In regard to this Rule, the Notes on Clauses say :—

"This is couched in terms wider than the language used in the present Code. The orders that may now be included, but are not within the language of Section 280 C. P. C., are orders passed on default of parties in prosecuting or defending claims. The mischief aimed at by providing a shorter period of limitation when claims are allowed or disallowed on merits is, more or less, present when the disposal is by default."

### Case Law.

1. The object of a summary investigation into a claim on attached property is, on the one hand, to prevent sales of property not belonging to the judgment-debtor, and, on the other, to ascertain the property that could be sold for the debt. The order made on the claim petition is expressly made final, subject to the result of any regular suit that may be brought to contest it within one year. Where the order is not, by regular suit, contested within the prescribed time and the sale proceeds in pursuance of the order, the parties to the order have no right to question the validity of the sale. The order will operate as estoppel as against the parties thereto in subsequent suits, even though they appear as defendants in such suits.— **9 T. L. R.,** *201.*

Ex.—K. P., 303.

2. An order passed on a claim petition has no force of *res judicata*, its only effect being that it will be conclusive on the parties thereto, and as regards the subject-matter thereof, if unquestioned for a year from the date of its passing.—

**10 T. L. R.,** *37.*

Fol—18 T. L. R., 200.

3. Where a plaintiff, an auction-purchaser, who alleged himself to be the *benami* for 2nd defendant at the time of purchase, had brought a suit under his original purchase for recovery of the property from the 1st defendant to whom the 2nd defendant had made an assignment of the same :

*Held.*—(1) The 1st defendant is not debarred from proving her title to the property as against the certified auction-purchaser, the plaintiff. Section 314 of the C. P. C. only bars the maintainability of suits brought *against* certified purchasers.

(2) Where a judgment-debtor has had notice of a claim and his interest in the property is in direct conflict with the interest claimed by the claimant, Article 7 of the Limitation Regulation applies to him, *i. e.*, his suit to set aside the claim order must be brought within one year of the date thereof.

**13 T. L. R.,** *86.*

Appr.—16 T. L. R., 61.
Fol. —K. P., 303.

4. An order passed on the merits of a claim petition claiming any portion of the attached property is conclusive, unless it is disputed within one year by means of a regular suit.

The order which has become conclusive by the failure of the defendant's predecessor in estate to contest it in time by a regular suit precludes the defendant from disputing the plaintiff's right to any part of the property in dispute.— **15 T. L. R.,** *63.*

5. When the judgment-debt in satisfaction of which an attachment of property was made has been paid into Court and the attachment has practically come to an end, the party who unsuccessfully sought to cancel the attachment in the first instance is not entitled to maintain a suit having for its object the cancellation of the attachment and the establishment of his alleged claim.

Section 280 contemplates the continuance of the attachment and it could not have been the intention of the Legislature to give the right of suit to an unsuccessful claimant, even after the object of the claim is attained in other ways.

The law does not require the formal withdrawal of an attachment on payment of the decree-debt into Court. It is left to the parties to apply for and obtain an order of withdrawal of attachment. The omission to obtain such order would not give an unsuccessful claimant a right of suit for cancelling an attachment which has vanished the moment the decree-debt has been paid into Court.— **18 T. L. R.,** *79.*

6. *Per Sadasiva Iyer, C. J.*—As the suit is brought under the statutory right given to plaintiff by Section 280 C. P. C. (that is, for a declaration that the order passed in favour of second defendant on the

latter's application to raise the execution attachment should be made ineffectual), the objection that an ordinary suit to declare an alienation as fraudulent against creditors should be brought only on behalf of all creditors, cannot prevail.—

**25 T. L. R.**, *19.*

Fol.—35 T. L. R., 1.

**7.** No revision petition lies against orders on claim petitions.

(1). The case in I. L. R. 8 Madras 484 at page 493 shows that where the Legislature has enacted that an order shall be "conclusive" no revision petition lies. The Section under which the order was passed in this case by the lower Court used the word "final," but it means the same thing (see 7 Bombay 341 at the end where the words "final" and "conclusive" are used as synonymous).

(2). No question of jurisdiction or irregularity is involved and petitioner has his right by suit expressly granted by the Legislature. The petition is rejected.—

**K. P.**, *95.*

Ref.—28 T. L. R., 209
(= 3 T. L. J., 169).

**8.** In a suit for a declaration of right to and recovery of plaint property on the footing of a lease, the 1st defendant set up in respect of that property his right as assignee of a mortgage of 1053 and his purchase of the equity of redemption in 1072 and both the lower Courts dismissed the suit holding the defence allegations to be true. In special appeal, two claim orders in favour of plaintiff passed after 1053 in cases in which the vendor's Tarwad was the judgment-debtor were urged as estopping 1st defendant from putting forth his claims.

*Held,*—(1) A judgment-debtor is not necessarily a party against whom an order is made within the meaning of that term as used in Section 280, C. P. C., and whether he was such must depend on the facts of each case.

(2) The claim orders being after 1053 could not affect 1st defendant's mortgage rights and the special appeal must be dismissed as the judgment-debtor was not proved to have had notice of the claim proceedings.— **K. P.**, *303.*

**9.** Revision petitions do not lie against orders in claim petitions which are declared by Section 280 to be conclusive, subject to the result of the suit which the parties against whom such orders are passed may institute to establish the right which they claim to the property in dispute.—

**2 T. L. J.**, *282.*

Ref.—28 T. L. R., 209
(= 3 T. L. J., 169).
9 T. L. J., 237.
Fol.—31 T. L. R., 94.

**10.** It was contended that if the petitions were to be really deemed as claims under Section 275, orders rejecting them would be final, and the appeals were incompetent. As the cases were those in which the lower Court had erroneously failed to exercise a jurisdiction vested in it by law, the matter may be dealt by the High Court in the exercise of its revisional jurisdiction.

**6 T. L. J.**, *151.*

**11.** Orders on claim petitions are not ordinarily liable to be interfered with in revision. No doubt, the revisionary jurisdiction of the Travancore High Court is much wider in scope than that of the High Courts in British India, but this distinction makes it all the more incumbent on the High Court to exercise the jurisdiction sparingly and with circumspection and to abstain, except on extraordinary occasions and under proper safeguards, from setting aside or varying orders which have not been appealed from, where appeals are permissible, or are expressly declared by law to be non-appealable and final.

In the case, it was neither alleged nor shown that irreparable injury would result from the rejection of the revision petition or that the Court below acted manifestly

*Sale generally.*

Power to order property attached to be sold and proceeds to be paid to person entitled.

62. Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

---

without jurisdiction when it disallowed the claim. On the other hand, the attachment objected to by the petitioner had been followed up by the proclamation and sale of the movable properties attached. The petitioner's proper course therefore was to institute a regular suit for recovery of the value of the movables as damages.— **9 T. L. J., *237.***

**12.** See also—

Sec. 10, Heading IV.—**18 T. L. R., *200.***

Or. XXI, r. 2.—**15 T. L. R., *167.***

„ 56.—**1 T. L. R., *93,***
**3 T. L. R., *6.***
**6 T. L. R., *114.***
**7 T. L. R., *121.***
**7 T. L. R., *173***
**1 S. D., *1.***

**Or. XXI, r. 62** [ = S. 281=*Or. XXI, r. 64* ]

The corresponding Section of the old Regulation was as follows :—

"281. *Power to order property attached to be sold and proceeds to be paid to person entitled.*—Any Court may order that any property not being a decree for money which has been attached, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same."

### Case Law.

**1.** A sale upon an attachment before judgment may legally follow after decree, only if there are no conflicting attachments. If there are conflicting attachments, the creditor could not, without a second attachment, call upon the Court to issue a process for sale of the property attached by him before decree.— **2 T. L. R. *42.***

Dist.—9 T. L. R., 72.

**2.** A Court-sale cannot change the nature of the tenure of the property or the particular enactment by which it was governed before such sale. The purchaser—whatever may be his caste or creed—succeeds to all the right, title and interest of the judgment-debtor.

The purchaser of a jenmom at a Court-sale is treated in all respects as the original Jenmi.

A public sale in execution of a decree vests in the purchaser the right, title and interest possessed on the land by the judgment-debtor. No portion of such rights can be taken away from the purchaser in the absence of a statute authorising the deprivation.

While a Court-purchaser succeeds to all the rights and privileges of the debtor in relation to the property purchased, he equally becomes liable to all the obligations created by the latter in favour of third parties in respect of that property.— **8 T. L. R., *6.***

Ref.—4 T. L. J., 117.

**3.** A sale by Court of Tarwad property in execution of a decree against the Karanavan, being held not merely on behalf of the Karanavan individually, but on his behalf

as representative of the Tarwad, absence of Seshakar's consent cannot invalidate the sale, as in the case of a private sale by the Karanavan. The sale is made on behalf of all those whom the decree would bind in the absence of any allegation of fraud, &c. There is no analogy between a sale in execution of a decree and a private sale. In the one, the purchaser derives his title through the vendor, and, in the other, he acquires a title by operation of law adversely to the judgment-debtor.—

**9 T. L. R.,** *100.*

**4.** The uniform practice of the Courts has all along been to determine the interest conveyed by a sale in execution of a money decree, with reference to the powers of the judgment-debtor to bind the family by the contract which is the basis for such decree. There is really no difference in this regard between an ordinary Hindu family in its undivided condition and a Malabar Tarwad.

**13 T. L. R.,** *5.*

**5.** Section 281 applies only to cases where the property has been attached in execution of the decree ; and an attachment before judgment is not such an attachment without a fresh application for execution in the prescribed form, though Section 469 [= Or. XXXVI, r. 11 ] dispenses with the necessity for a re-attachment.—

**2 T. L. J.,** *100.*

**6.** A, in the capacity of judgment-creditor, purchased in Court sale, as a result of chance, certain properties of the same name as purchased by B in the same sale. B sued A, on the mere identity of the name for the declaration of his title to the same. The Courts below dismissed B's claim. It was contended in special appeal that A was estopped from saying that the property purchased by him in the Court sale was a different property bearing a different name.

*Held.*—(1) As there was no intention on the part of A to deceive B by misrepresentations and no inducement to him to act on such deception, there was no estoppel in the case and that it did not fall within the purview of Section 115 of the Evidence Act.

(2) An execution creditor gives no implied warranty of title to a judgment-debtor to property sold at his instance.

*Semble.*—The distinction between private and Court sales or sales ***in invitum*** is that, in the former, the price is fixed by the vendor and the purchaser alone, while in the latter, the sale must be made by public auction conducted by a public officer, of which notice must be given as directed by the Act and at which the public are entitled to bid. Under the former, the purchaser derives title through the vendor and cannot acquire a better title than that of the vendor. Under the latter, the purchaser, notwithstanding he acquires merely the right, title and interest of the debtor, acquires the same by operation of law adversely to the debtor.— **15 T. L. J.,** *29.*

**7.** A obtained a decree against B and attached and brought to Court-sale certain properties in which B had only a reversionary interest at the time. Afterwards when the succession opened, B became the full owner and he sold the properties to C. C brought a suit for possession as against A, purchaser in auction.

*Held.*—The sale in execution of B's interest in the properties being a transfer of an expectancy was null and void, as the transaction was opposed to public policy and interest.— **25 T. L. R.,** *154.*

**8.** A mortgagor, judgment-debtor, died after decree. The decree-holder brought on record a wrong person, conducted proceedings in execution and the equity of redemption in the plaint properties was eventually sold and purchased by plaintiff in 1077. In a suit for redemption filed in 1081, the mortgagees ***inter alia*** contended that the court-sale under which plaintiff claimed his right of redemption was not valid as the proper representatives were not impleaded.

*Held.*—(1) Even though the right person was not on record as legal representative

Sales by whom conducted and how made.

63. Save as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the Court or by such other person as the Court may appoint in this behalf, and shall be made by public auction in manner prescribed.

Proclamation of sales by public auction.

64. (1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.

---

of the judgment-debtor in execution, the sale was only voidable. Any step to set it aside must be taken within one year of the sale being confirmed and irregularities, such as bringing in the wrong representative in execution, did not *per se* vitiate the sale.

(2) The sale not having been sought to be set aside within such time, the plaintiff's title under the purchase had become absolute under Article 8 (*a*) of the Limitation Regulation.— **26 T. L. R.,** ***70*** **(= 1 T. L. J.,** ***191*****).**

Fol.—26 T. L. R., 131 (=1 T. L. J., 195).

**9.** No member of a judgment-debtor's Tarwad could seek to set aside a court-sale of Tarwad property on any ground whatever unless he brings his suit within one year from the date of the sale.

The nature of the amendment made in Article 8 by Regulation V of 1068 makes it clear that the term, 'to set aside an execution sale', as applied to sales held in execution of decrees against the members of the family of the parties who seek to set them aside should be interpreted as applying to all suits when the validity of such sales comes into question. The object of such an enactment is probably to minimise collusive suits by members of a Tarwad.— **26 T. L. R.,** ***131*** **(= 1 T. L. J.,** ***195*****).**

Ref.—4 T. L. J., 178.

**10.** A sale without the proper representatives being brought on the record is not a nullity. It is operative, though liable to be set aside for due cause. "The Limitation Act protects *bona fide* purchasers at judicial sales by providing a short limit of time within which suits may be brought to set them aside. If the protection is to be confined to suits which seek no other relief than a declaration that the sale ought to be set aside and is to vanish directly some other relief consequential on the annulment of the sale is sought, the protection is exceedingly small." (F. B.).— **29 T. L. R.,** ***133*** **(= 3 T. L. J.,** ***282*****).**

**11.** See also—

Sec. 52.— **13 T. L. R.,** ***181.*** **15 T. L. J.,** ***324.***
,, 55.— **9 T. L. R.,** ***72.***
,, 56.— **15 T. L. J.,** ***364.***
,, 59.— **8 T. L. R.,** ***119.***
Or. XXI, r. 56.—**7 T. L. R.,** ***134.*** **13 T. L. R.,** ***50.***
,, r. 69.—**40 T. L. R.,** ***245*** **(=14 T. L. J.,** ***338*****).**

---

**Or. XXI, r. 63** [=S. 283=*Or. XXI, r. 66*]

See Rule 73 of this Order for saving.

**Case Law.**

In execution of a decree for money obtained by the plaintiff, a pro-note which was negotiable, in favour of the judgment-debtor was attached and seized. The District Munsiff, in whose Court the decree

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible—

(a) the property to be sold;

(b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;

(c) any incumbrance to which the property is liable;

(d) the amount for the recovery of which the sale is ordered; and

(e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property.

(3) Every application for an order for sale under this Rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by Sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

---

was being executed, endorsed the note in favour of the plaintiff, decree-holder. The plaintiff brought the suit to recover money under the said pro-note:—

*Held.*—The mere endorsement of the pro-note by the Munsiff was ineffectual to invest the plaintiff with the title to the pro-note.

In order that the property in a negotiable instrument may vest in a purchaser, it is essential that the instrument should be sold either by public auction or through a broker as provided in Sections 283 and 293 [= Or. XXI, r. 73] of the Civil Procedure Code.— **29 T. L. R., *41*** **(= 3 T. L. J., *279*).**

**Or. XXI, r. 64** [= S. 284=*Or. XXI, r. 66*]

I. 1. *Sub-Rule* (*2*).—The words "be drawn up after notice.........and shall" are new.

2. *Sub-Rule* (*3*).—This is new.

3. *Sub-Rule* (*4*).—The words "on the application of the judgment-creditor" which occurred, in the old Section, after the words "the Court may" have been omitted.

The words "whom it thinks necessary to summon" are new.

4. The following second Para of the old Section and the first sentence of the third Para (the second sentence being Sub-Rule 4) have been omitted ;—

*2nd Para.*—"The proclamation shall further declare that the sale extends only to the right, title and interest of the judgment-debtor in the property specified therein, and that the particulars mentioned in Clauses (*a*), (*b*), (*c*), (*d*) and (*e*) are stated in so far as they are known."

"The judgment-creditor shall furnish the Court with the particulars above mentioned as far as he may be able to ascertain them."

II. The provision for notice made in Sub-Rule (2) is to "give effect to a practice, which is stated to be followed with great advantage in Calcutta, of drawing up proclamations after notice to the parties, who are thus afforded an opportunity of settling the contents correctly, and, in a great measure, are restrained from subsequently raising obstructive and dilatory objections."

*India Gazette*
*dated 21-3-1903, Pt. V.*

III. For Form of Warrant of sale of property in execution of a decree for money, see Appendix E, Form No. 27.

For Form of Notice of the day fixed for settling a sale proclamation, see Appendix E, Form No. 28.

For Form of Proclamation of sale, see Appendix E, Form No. 29.

For Form of Order on the Nazir for causing service of proclamation of sale, see Appendix E, Form No. 30.

IV. After Section 284, there was in Regulation II of 1065, the following Section taken from the Indian Code of 1882. It has been omitted here, as in the existing Indian Code:—"285. *Indemnity of Judges, &c.*—No Judge or other public officer shall be answerable for any error, mis-statement, or omission in any proclamation under Section 284, unless the same has been committed or made dishonestly."

### Case Law.

1. A mortgagee leased to the mortgagor the several properties mortgaged to him and obtaining a decree for arrears of rent due, attached the equity of redemption in some of those properties. In the proclamation of sale, the mortgage debt due to the mortgagee was mentioned in one lump. The lower Court refused to grant the mortgagor's prayer that the mortgagee should be ordered to apportion the mortgage amount in proportion to the value of each property separately :

*Held.*—Because, as a rule, a mortgage is indivisible, the Court cannot, without the mortgagee's consent, apportion the amount on each property according to its value.

Section 284 prescribes the mode in which proclamations of sale should issue and what particulars they should contain, and one of the particulars is the mention of the amount of any encumbrance on the property, if one should exist. The decree-holder had by mentioning the mortgage amount fully complied with the requirements of the Section.— **17 T. L. R.,** ***110.***

Ref.—27 T. L. R., 18
(= 2 T. L. J., 108).

2. The holding of a sale on a wrong date is a mere irregularity, and will not make the sale a nullity.— **2 S. D.,** ***269.***

3. Under a deed of mortgage, the mortgagor became lessee of the property mortgaged, and arrears of rent were declared by the deed to be a charge on the property. The mortgagee-lessor obtained a decree for arrears of rent; and in execution of the decree the property was sold subject to the mortgage amount and purchased by a stranger. The mortgagee obtained a second decree for rent, *viz.*, for arrears that accrued due after date of first suit, in execution proceeded against the property in the hands of the purchaser under the first court-sale. It was contended on behalf of

the purchaser that the mortgagee, having omitted at the time of first sale to mention the existence of arrears of rent which were chargeable on the property, could not proceed against the property which was sold free of all charges except the one mentioned by him in the sale proclamation.

*Held.*—As at the time of first court-sale, the mortgagee failed to mention the existence of any further charge in his favour, the auction-purchaser took the property free of all charges on account of subsequent arrears of rent. The omission by the mortgagee to disclose the existence of other liens on the property must be taken to amount to a waiver on his part of his right to enforce such liens.

The omission of the execution creditor to mention in the sale-proclamation any second or subsequent charge that he may have on the property raises a presumption that the sale in execution, following on the proclamation, was free of the subsequent or second charge.

"The purchaser, if he knew of the mortgage, was entitled to assume, unless notified to the contrary, that the plaintiff was selling the whole interest in the mortgaged property; and if he did not know of the mortgage, that the plaintiff, at all events, had no lien over the property which he was bringing to sale and was not, under the provisions of the Code, bound to search the register to ascertain whether the plaintiff held a lien over the property or not." (22 Bom., 686).— **26 T. L. R.,** ***254*** **(= 2 T. L. J.,** ***66*)**.

**4.** When a Jenmi brings his Kanom property to sale for arrears of Michavarom, due up to a certain date, without declaring that the holding was subject at the time of sale to a further charge in his favour for arrears of a subsequent period, the auction-purchaser takes the property free of all encumbrances on account of subsequent arrears.

The fact that the Jenmi has himself become the purchaser does not make any difference in the law. He is entitled to a personal decree against the tenant for the subsequent arrears up to the date of delivery of possession of the holding purchased in execution.— **29 T. L. R.,** ***102*** **(= 3 T. L. J.,** ***409*)**.

**5.** The decree-holder in a suit attached 800 bags of paddy belonging to the judgment-debtor and in the possession of a stranger on behalf of the judgment-debtor. In the proclamation of sale, the decree-holder stated that the bags contained each 150 lbs. of paddy. The plaintiff purchased them in Court auction and found on measurement the quantity to be less. It was found that there was no fraud on the part of the decree-holder and that the plaintiff had inspected the paddy before purchasing.

*Held.*— The decree-holder (defendant) was not liable for the loss. The extent and value set forth in the sale proclamation is at best an approximate statement. It was not fraudulently mis-stated. The defendant owed no duty to the plaintiff who was a stranger to him.— **5 T. L. J.,** ***96***.

**6.** The order of the District Judge was —The proclamation may be issued subject to the determination by the Court on a subsequent date of the actual amount due.

Such an order to issue proclamation should not have been passed before deciding the judgment-debtor's objection as to the correctness of the amount payable under the decree.— **8 T. L. J.,** ***202***.

**7.** A gross under-statement of the value of the property in the proclamation is a material irregularity in publishing and conducting the sale, under Section 308, C. P. C., [Or. XXI, r. 87], against which the judgment-debtor will be entitled to seek relief under that Section.

"It is true that the mis-statement is something more grave than an ordinary irregularity of procedure; but the fact that it is so and that it was made gratuitously by the decree-holder and the Court

does not prevent it from being a material irregularity in publishing or conducting the sale, such as to bring the case within the special remedy provided by the above Section. Whatever material fact is stated in the proclamation (and the value of the property is a material fact), must be considered as one of those things 'which the Court considered material for the purchaser to know, and it is enacted in terms (though express enactment is hardly necessary for such an object) that those things shall be stated as fairly and accurately as possible." (20 All., 412).— **9 T. L. J.,** *271.*

**8.** Before the property was sold, the judgment-debtor complained to the Court that the schedule of proclamation did not correctly specify the value of the property sought to be sold or the number of trees standing thereon.

*Held.*—Section 284, C. P. C., does not require the executing Court to make an investigation on the application of the judgment-debtor into the question of the value of the property to be sold, to record evidence and to come to a decision on the point. The judgment-debtor has his remedy under Section 308 [= Or. XXI, r. 87] if the property happens to be undersold in consequence of a material mis-representation of its value in the proclamation schedule.— **12 T. L. J.,** *276.*

Ref.—19 T. L. J., 924.

**9.** The assignee of an auction-purchaser put in a petition praying that item No. 1 described in the sale certificate granted to him as "Kallarkottu Devaswom Pattom Pallathupurayidom Survey No. 472/1A, measuring 38 cents" should be corrected as "Kudiyiruppu, Second Kannaru Survey No. 677/25 in 97 measuring one acre and one cent." This petition was opposed by the decree-holder and was rejected by the Munsiff. The District Judge, on appeal, allowed the correction. The defendant and his assignee appealed.

*Held.*—The question for decision was whether the prayer of the assignee of the auction-purchaser for correction of the description of item No. 1 property in the sale certificate could be allowed.

The High Court, after finding upon evidence that it was not possible to come to any certain conclusion as to the identity of the property actually sold, held :—

This is not a case where the maxim *falsa demonstratio non nocet cum de corpore constat* (mere false description does not vitiate if there be sufficient certainty as to the object) applies. The maxim is often stated without the addition of the words *cum de corpore constat.* But these words are of importance. The maxim applies only to cases in which the false demonstration is superadded to that which was sufficiently certain before.

Section 284 requires that the sale proclamation shall specify, as fairly and accurately as possible, (among other things), the property to be sold, any encumbrance to which the property is liable, and every other thing which it is necessary for the purchaser to know in order to judge of the nature and value of the property, and that the judgment-creditor shall furnish the Court with the particulars above mentioned. The object of the above provisions is clearly to enable the intending purchasers to have an accurate idea of the nature of the property they are going to purchase and to protect the judgment-debtor against this property being sold for an inadequate amount as a result of misdescription. It will open a wide door to fraud if decree-holders could sell properties through Court with misleading descriptions and purchase the same themselves as in the case and afterwards get the sale certificate corrected with material alterations in the description of the property as stated in the proclamation for sale.— **38 T. L. R.,** *17* (**= 12 T. L. J.,** *278*).

Ref.—12 T. L. J., 283.

**10.** Arrears of rent due in respect of a property sought to be sold should be regarded as an encumbrance which should be

mentioned in a sale proclamation, if the right to such arrears is intended to be reserved.— **15 T. L. J.,** *364.*

**11.** The preponderance of authority is in favour of the view that proceedings under Section 284, C. P. C., are ministerial proceedings, and that an order made in such proceedings is not a decree appealable as such within the meaning of Section 288 [ new Section 40 ].—*Obiter*.—

**17 T. L. J.,** *121.*

Ref.—43 T. L. R., 429
(=19 T. L. J., 491).

**12.** An order passed under Rule 64 of Order XXI is a judicial order and not a ministerial one.

For such an order to become appealable under Section 40, it must be one which satisfies the definition of a decree under Section 2.

Whether the determination of particulars under Rule 64 of Order XXI will constitute a decree will depend upon the nature of the particulars so determined.

Where the only objection is that the property has been undervalued, an order determining that point is not subject to appeal.— **18 T. L. J.,** *430.*

**13.** An order passed under Rule 64 of Order XXI settling the details in the proclamation cannot *per se* be treated as one of a judicial nature; but, if it relates to matters relating to the liability of the properties for being proceeded against under the decree and other kindred ones, it partakes of a judicial character, and unless vacated would conclude the parties so far as such questions are concerned.—

**18 T. L. J.,** *485.*

**14.** Ordinarily, orders under Order XXI, Rule 64, are not appealable, as they are more or less of a quasi-judicial, if not interlocutory, character, though they could not be treated as being strictly ministerial in their nature. But if, however, the orders can be taken to have settled some points relating to the execution of the decree, such as the settling of the boundaries and the determination that certain accredited land should be included in the property to be sold, they would fall within the ambit of Section 40 of the Code, as they necessarily relate to the execution of the decree within the meaning of that Section.

When the application is that the sale of a portion of the property of the judgment-debtor should be postponed till the other properties are sold, an order passed on the application falls under Section 40. This does not belong to the class of orders expressly declared appealable as such under Order XLII, Rule 1. The order appealed against is a decree under Section 2 (2) against which an appeal would clearly lie under Section 76.

The right of marshalling is available in execution proceedings to a judgment-debtor if the equities between the parties justify the application of the same. It is open to a judgment-debtor to claim the same, even if he had failed to set up the same in the suit itself, the transaction, on the strength of which he claims such right, having taken place before the date of the suit. Such a right could be validly set up even if the same had been claimed in the suit itself and refused, as the proper stage at which the same could be set up was during the execution proceedings. What should be looked to in such cases is that the mortgagee's interests are not in any way jeopardized.—

**43 T. L. R.,** *429*
**(=19 T. L. J.,** *491*).

**15.** The appeal was against an order in execution dismissing the objection petition of the judgment-debtors to the proclamation and sale of the properties covered by the decree. The objection-petition stated that the properties had been misdescribed and undervalued and that there was a defect of parties.

65. (1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by Rule 52, Sub-Rule (2).

Mode of making proclamation.

(2) Where the Court so directs, such proclamation shall also be published in the Government Gazette or in a local newspaper, or in both, and the costs of such publication shall be deemed to be costs of the sale.

(3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Court, otherwise be given.

---

On behalf of the respondent-decree-holder a preliminary objection was raised that no appeal lay. It was contended that the order was of a ministerial and administrative nature and not a judicial one and that, even if it was treated as a judicial one, it could not be considered to be the determination of a question within Section 40 so as to constitute a decree under Section 2 of the Code.

*Held.*—(1) The order in question was a judicial order. The insistence of issue of notice to the other side and the enabling provision authorising the Court to summon witnesses for examination or production of documents would constitute proceedings under Order XXI, Rule 64, of the Code judicial proceedings in the eye of law.

(2) All orders passed under Order XXI, Rule 64, could not be treated as falling under Section 40. If, however, they decided some questions relating to the execution of the decree, the orders would fall within the ambit of Section 40, and be, therefore, appealable as decrees under Section 2 (2) of the Code. In this view, the order in question, so far as it related to misdescription and defect of parties, fell within the purview of Section 40 of the Code and was appealable. But so far as the question of under-valuation was concerned, the order could not be treated as one falling under Section 40 and was not, therefore, appealable.— **19 T. L. J.**, *530*.

**16.** See also—

Or. XXI, r. 62.—**15 T. L. R.**, *29*.

„ r. 87.—**39 T. L. R.**, *211* (=**14 T. L. J.**, *207*).

---

**Or. XXI, r. 65** [=S. 286=*Or. XXI, r. 67*]

I. The corresponding Section of Regulation II of 1065 ran as follows :—

"286. *Mode of making proclamation.*—The proclamation shall be made in manner prescribed by Section 271, and a copy thereof shall then be fixed up in the Court-house, and in the case of land paying revenue to Government, also in the Tahsildar's office.

"If the Court so direct, such proclamation shall also be published in the Official Gazette and in some local newspaper, and the costs of such publication shall be deemed to be costs of the sale."

II. *Sub-Rule (1).*—**1.** The words "as nearly as may be" are inserted "because the provision applies generally to sales of both kinds of property, and in the case of movables, the provisions relating to immovable property cannot be applied in their entirety."— *India Gazette dated 21-3-1903, Pt. V.*

**2.** It would be noted that the word "then" which occurred in the first Para of Section 286 above given did not find a place in Section 271—see under Rule 52 *Supra*.

As the present Rule (66) requires that the proclamation shall be made and published in the manner required by Rule 52, Sub-Rule (2), the word "then" was added in that Rule, as "the sequence of acts is important with reference to the starting point of the period of limitation prescribed in Rule 66."— *Ibid.*

III. *Sub-Rule* (2).—The Courts are given "an option not to publish in the Gazette, which is not commonly read by the classes most affected."— *Ibid.*

*Sub-Rule* (3).—This incorporates the substance of a leading decision on the subject of the division of a joint property into lots —12 Bom., 368. It was held in that case that where property is divided into a number of small lots, as a means of obtaining a better aggregate price, the law does not require that separate proclamation should be made on each lot.

IV. Section 266 contains the necessary directions as to the publication of a proclamation of sale. The word "proclamation" used in the Section is the advertisement of sale prepared in the manner prescribed in Section 284 [ = Rule 64]. The verb "made" in the first sentence of the Section does not obviously mean "drawn up." Its meaning cannot but be "published." The word "proclaimed" in Section 271 [ = Rule 52 ] means "published." To contend that both the words "proclaimed" and "proclamation" should be understood in one and the same sense is clearly opposed to the context. The Legislature could not have intended to dispense with the affixing of the copy of the proclamation of sale on the spot, which would not only be convenient to many intending purchasers, but also tend to secure better prices for the property sold, by increasing the number of bidders at Court auction. The cause of the repetition in Section 286 of the mode of publishing copies of proclamation of sale in Court and Tahsildar's office is that such publication should be made only *after* the publication on the spot, whereas in the case of attachment order, the affixing of copies in the Court-house and Tahsildar's office could be done before the property is actually attached. The adverb "then" used in Section 286 in connection with the affixing of copies in the Court and Tahsildar's office clearly supports this view. As a difference in the *time* of the publication of order of attachment and proclamation of sale in the Court and Tahsildar's office was introduced, the repetition in Section 286 became necessary; but in the case of affixing of copy of the proclamation on the spot which could be done *simultaneously* with the beat of drum, no such repetition was necessary.—
**13 T. L. R. App.**, *9.*

### Case Law.

**1.** The omission to affix near the property the proclamation of sale held in execution of a decree under Section 286 of the Civil Procedure Code is a material irregularity which vitiates the sale.

The words—"The proclamation shall be made in the manner described by Section 271" in Section 286 were meant to include the affixing to the property as well as the publication by beat of tom-tom. The word "then" following the above phraseology indicates that the affixing in the Court-house and the Tahsildar's Cutcherry is to be in addition and not instead of the affixing at the spot. The Legislature could not have meant to dispense with the procedure in question as it is highly necessary to give intending purchasers full particulars of the property to be sold.— **21 T. L. R.**, *157.*

**2.** The decree was against three brothers. The sole surviving brother applied, on behalf of himself and the minor son of a deceased brother, to set aside the sale of their property alleging material irregularity, but he withdrew the application subsequently and the Court sanctioned it. On the application of the minor's mother for a review of the order on the ground that the guardian had acted collusively, the Court set aside the sale to the full.

66. Save in the case of property of the kind described in the proviso to Rule 41, no sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immovable property, and of at least fifteen days in the case of movable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the Judge ordering the sale.

Time of sale.

67. (1) The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment:

Adjournment or stoppage of sale.

Provided that, where the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court.

---

*Held.*—There was material irregularity by reason of the inadequacy of the price and the consequent loss, the undervaluation in the proclamation list and the omission to affix the sale proclamation on the spot. The lower Court's order could be upheld only to the extent of the minor's share.— **K. P.,** *260.*

Fol.—9 T. L. J., 271.
Ref.—13 T. L. J., 462.

**3.** *Held* (by a majority).—The making of a sale proclamation on the property of a judgment-debtor is "execution of any process for enforcing the judgment on property" within the meaning of Article 136 of the Limitation Regulation (old).

*Per Viraraghava Iyengar, J.*—Section 286 says that a proclamation is under the the Code made in the same manner as a warrant of attachment, and if time runs against the judgment-debtor under Article 136 from the date of attachment, it seems to me that there is no sufficient reason for holding that time could not run against him from the date when the proclamation was made under Section 286.— **9 T. L. J.,** *119.*

Fol.—37 T. L. R., 279
(=11 T. L. J., 318).

**4.** Where a proclamation of sale was made on the property on the 10th Kanni 1096, but the publication in the Tahsildar's office as contemplated in Section 286, C. P. C., was effected only on the 12th Kanni 1096, and the application to set aside the *ex parte* decree was made on the 10th Thulam 1096:

*Held.*—The application was not barred under Section 136 of the Limitation Regulation (old). It is only after the affixing of the copy in the Tahsildar's office that the "process" can be said to have been executed, which means carried into effect. The publication in the Tahsildar's office was admittedly on the 12th Kanni 1096; and the application was therefore within time.— **37 T. L. R.,** *290*
(**= 12 T. L. J.,** *262*).

**5.** See also—
Or. XXI, r. 52.—**13 T. L. R. App.,** *9.*

---

**Or. XXI, r. 66** [= S. 287 = *Or. XXI, r. 68*]

**Or. XXI, r. 67** [= S. 288 = *Or. XXI, r. 69*]

**Case Law.**

**1.** A decree granted reliefs separately against each property. The holder of one

(2) Where a sale is adjourned under Sub-rule (1) for a longer period than seven days, a fresh proclamation under Rule 65 shall be made, unless the judgment-debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court which ordered the sale.

---

of the properties deposited in Court the proportionate debt charged upon that property. The Court, in spite of the deposit, sold the very property along with others for the realisation of the remaining portion of the debt. In the appeal preferred by the depositor to cancel the sale as illegal, it was contended by the purchaser that the debt alluded to in Section 288, C. P. C., meant the whole of the decree debt and not a portion of it, that the purchaser not being a representative of any of the parties to the suit, Section 238 [new Section 40] would not apply, and that, therefore, no appeal lay in the case.

*Held.*—(1) The said deposit came within the meaning of debt under Section 288 and therefore, the sale was illegal. The Section imperatively enjoins the stay of sale if before the lot is knocked down, the debt and costs, &c., are tendered to the officer conducting the sale.

(2) The appeal was maintainable.

Even assuming that no appeal lay, considering the hardship, if not the injustice done to 3rd defendant (the depositor of the proportionate debt) by the gross carelessness of the Judge who had the conduct of the sale in not obeying the strict directions contained in Section 288, this matter can be treated as one falling under the High Court's revisional powers granted by Section 568, C. P. C. [new Section 89] and such order passed as may seem fit.— **16 T. L. R. App.,** ***3.***

Fol.—20 T. L. R., 151.
26 T. L. R, 246.
Ref.—2 S. D., 185.

**2.** In execution of a decree a sale which was adjourned only for 7 days (the decree-debtor applied for a month's adjournment to enable him to raise funds), took place on the 9th day owing to the intervention of some holidays. This sale was impeached on the ground of irregularity which caused the property to be under-sold. The lower Court held that, as the sale took place on the next day after the 7th day, the sale could not be set aside.

*Held* (on appeal).—(1) There was material irregularity in the publication of the sale.

Section 288 lays down that an adjournment of the sale may be made by the Court for seven days without a fresh proclamation. No sale can take place without a proclamation and the Code allows the proclamation to be omitted only in the case of a sale adjourned for seven days. The omission to advertise a sale is an irregularity of a material nature. The omission to publish a sale by beat of drum has been held to be a material irregularity. When a sale fixed for 20th November was delayed until the 22nd without any order of postponement or a fresh proclamation, it was ruled there was material irregularity.

(2) The question of substantial loss was not tried and the case was therefore remitted under Section 583, C. P. C. [=Or. XL, r. 22], for disposal *de novo*—**K. P.,** ***568.***

**3.** See also—

Sec. 40.—**2 S. D.,** ***236.***
**29 T. L. R.,** ***300.***

68. Any deficiency of price which may happen on a re-sale by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court, by the officer or other person holding the sale, and shall, at the instance of either the decree-holder or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money.

Defaulting purchaser answerable for loss on re-sale.

69. (1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

Decree-holder not to bid for or buy property without permission.

(2) Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, subject to the provisions of Section 59, be set off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

Where decree-holder purchases, amount of decree may be taken as payment.

(3) Where a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree-holder.

---

**Or. XXI, r. 68** [= S. 290=*Or. XXI, r. 71*]

For Form of certificate by Officer holding sale, of deficiency of price, see Appendix E, Form No. 31.

---

**Or. XXI, r. 69** [=S. 291=*Or. XXI, r. 72*]

1. *Sub-Rule (1)*.—The following words, which occurred as the second sentence in the corresponding first Para of Section 291 of the old Regulation, have been omitted :—

"The Court may, in granting such permission, add such conditions as it deems necessary."

In regard to the sentence thus omitted, it may be noted that Section 294 of the Indian Code of 1882 did not contain it. In adopting that Section, the above sentence was also added. The Statement of Objects and Reasons said :—

"48. The object of Section 294 is to prevent the purchase of property by the judgment-creditor at a nominal price. Permission is to be granted, before the property is brought to sale. If it is unconditional, the mischief sought to be removed may be committed under the direct *sanction* of the Court. It is, therefore, expedient that the Court must have the power of setting aside the sale when it finds that the property was grossly undersold. This can be secured only by empowering the Court to attach such conditions as it may consider necessary, to the permission it may grant."

**2.** *Sub-Rule (2).*—The words "subject to the provisions of Section 59" have been substituted for the words "if he so desires."

**3.** *Sub-Rule (3).*—The words "whose interests are affected by" have been substituted for the words "interested in."

### Case Law.

**1.** The object of Section 291, C. P. C., is to prevent judgment creditors from buying properties at nominal prices in execution of their own decrees and thereby committing fraud upon the debtors. This will not be completely secured if any member of his family is allowed to purchase the property. The benefit which the Legislature intended to confer on the judgment-debtors would be lost by holding that the restriction laid down by Section 291 does not apply to the undivided members of the creditor's family. The law must be so interpreted as to secure the benevolent object of the Legislature and to prevent the mischief which the law intended to remove.

Where the undivided Seshakaran of the judgment-creditor purchased the property of the judgment-debtor at the court auction:

*Held.*—The purchase comes within the prohibition under Section 291 of the Civil Procedure Code.— **17 T. L. R. App.**, *6*.

**2.** No appeal lies from an order passed under Section 291 granting permission to a decree-holder to bid at a sale in execution of his decree. It is not every order under Section 291 that is made appealable under Section 557, Clause (16), [ =new Section 82 and Or. XLII, r. 1 ]; but only orders referred to in Clause (3) of Section 291. Section 288 [new Section 40] is not wide enough to include orders under Section 291.—

**26 T. L. R.**, *147*.

**3.** The plaintiff, who was a decree-holder, advanced money to the defendant for his purchase in his name *benami* for the plaintiff, of property sold in execution of the decree held by the plaintiff. The plaintiff sued to recover the money he had so advanced to the defendant as the suit to recover the property purchased *benami* was barred by Section 314, C. P. C, [new Section 58]. The District Judge held that Section 314 was wide enough to bar the plaintiff's suit for recovery of money.

*Held.*—The suit was not maintainable as the plaintiff, as decree-holder, had also not obtained the sanction of the Court to bid at the sale, thus violating the express provisions of Section 291, C. P. C. He was not entitled to a return of the money from the certified purchaser who had purchased with such funds.

"It is not necessary to decide in this case whether Section 314 alone forbids a suit for the purchase money by a person not a party to the decree who advances money for a *benami* purchase in the name of another intended to benefit the person paying the money. If this suit were by such a person, we would have felt considerable doubt in coming to the conclusion that this Section forbade his suit for the money."—

**30 T. L. R.**, *254*
(**= 5 T. L. J.**, *90*).

**4.** Section 291, C. P. C., occurs among 'general rules' relating to the sale of property both movable and immovable. Section 295 C. P. C. [ = Or. XXI, r. 75] appears among the rules as to movable property. The conflict between the two Sections can be reconciled only by treating Section 295 as an exception to Section 291.

The rule of construction is that 'whenever there is a particular enactment and a general enactment in the same statute and the latter taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative and the general enactment must be taken to affect only the other part of the statute to which it may properly apply'.

Another rule of construction which leads to the same result is that the later provision overrides the earlier. "Where two coordinate Sections are apparently inconsistent, an effort must be made to reconcile

them. If this is impossible, the later will generally override the earlier. But a particular enactment, whenever found, must be construed strictly as against a general provision."

The omission of a decree-holder to obtain the previous permission of the Court to bid at an auction sale of immovable property being only an irregularity, it would be decidedly so in the case of movable property.

**40 T. L. R., *1***

**(=14 T. L. J., *197*).**

Fol.—19 T. L. J., 363.
Ref.—17 T. L. J., 822.

**5.** The respondent, who was the plaintiff in O. S. 38 of 1095, Quilon District Court, obtained a hypothecation decree against the appellants, defendants 1 and 2. Eight items of properties were proclaimed for sale and items 3 to 6 were put up for sale and purchased by the plaintiff's Vakil for the decree amount. The plaintiff had previously filed an application for permission to bid, which also prayed that the purchase-money might be set off against the decree-amount and this had been sanctioned by the Court. Soon after the sale on the same day, the plaintiff's Vakil put in an application stating that he had bid for items 3 to 6 for the decree-amount, but he now understood that the bid was the result of a misunderstanding of his client's instructions which were to bid for items 3 to 8 and prayed that the sale may be set aside. The District Judge set aside the sale.

On appeal it was contended by the appellants, judgment-debtors, that there was no Section of the Civil Procedure Code to justify the setting aside of the sale and that the plaintiff can have no relief either on the ground of mistake as it was only an unilateral one or on the ground of agent exceeding his authority, as this was utmost a case where an agent has done acts or incurred obligations to third persons on behalf of his principal contrary to the secret instructions of the latter, but within his apparent authority, so that it might be said that the principal has by his conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority [Section 237, Indian Contract Act, Ill : (*a*)]. The respondent contended that, no deposit under Section 303 C. P. C. [= Or. XXI, r. 81] having been made, the sale to the plaintiff was not complete and that the petition put in by the plaintiff's Vakil should be regarded not as an application to set aside the sale but as a refusal on the part of the purchaser to complete a sale. It was also contended that the position of a Vakil towards his client is not the same as the position of an agent.

*Held* (Overruling the respondent's contentions).—(1) The sale was a completed sale. Apart from any express provision of the Civil Procedure Code, there would be a valid contract of sale on the property being knocked down at the auction to the purchaser. Section 291 C. P. C., is one of those general rules relating to the sale and delivery of property in execution which govern the operation both of the rules relating to the sale and delivery of movable properties and the rules relating to the sale and delivery of immovable property. Section 303 C. P. C., is therefore controlled in its operation by Section 291. When a decree-holder applies for permission to bid the property, the Court may, in granting such permission, impose any conditions it chooses, such as that the purchase money be set-off against the decree-debt, and the decree-holder in order to obtain the consent of the Court may suggest certain conditions on which he may be allowed to purchase the property.

As it is admitted that the property was knocked down to the decree-holder and as he has desired that the purchase-money be set-off against the decree-debt, there is a completed transaction. There is nothing in the C. P. C., to show that the decree-holder's desire to have the purchase money and the amount due on the decree set-off

Restriction on bidding or purchase by officers.

70. No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

*Sale of movable property.*

Sale of agricultural produce.

71. (1) Where the property to be sold is agricultural produce, the sale shall be held,—

(*a*) if such produce is a growing crop, on or near the land on which such crop has grown, or,

(*b*) if such produce has been cut or gathered, at or near the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited :

Provided that the Court may direct the sale to be held at the nearest place of public resort, if it is of opinion that the produce is thereby likely to sell to greater advantage.

---

against each other must be expressed only after the purchase.

The act to be done under para 2 of Section 291 is only a ministerial and not a judicial one.

(2) The case of a Vakil is no real exception to the general law of principal and agent.

The question in each case is what is the extent of the agent's implied authority.

Though a Vakil is engaged to conduct or defend a suit for his client along certain lines indicated in the pleadings and has no apparent authority to give up any part of his client's case or to make any admission inconsistent with that case, in the case of the purchase of property, there does not seem any valid reason for distinguishing a Vakil from any other agent authorised to purchase property for his client. There is no reason why the principle underlying Section 237 of the Indian Contract Act should not be applied to the case of a Vakil.

**40 T. L. R.**, *245* (= **14 T. L. J.**, *333*).

Ref.—17 T. L. J., 146.

6. When the Appellate Court sets aside the original decree and passes a new decree in lieu thereof, an auction-purchase made by the decree-holder in execution of the original decree which has been set aside, cannot stand.— **15 T. L. J.**, *272*.

7. See also—

Or. XXI, r. 86.—**38 T. L. R.**, *211* (=**13 T. L. J.**, *479*).

**38 T. L. R.**, *241* (=**12 T. L. J.**, *162*).

---

Or. XXI, r. 70 [=S. 289= *Or. XXI, r. 73*]

1. The words "or other person" are an addition.

(2) Where, on the produce being put up for sale,—

(a) a fair price, in the estimation of the person holding the sale, is not offered for it, and

(b) the owner of the produce or a person authorised to act in his behalf applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market-day,

the sale shall be postponed accordingly and shall be then completed, whatever price may be offered for the produce.

Special provisions relating to growing crops.

72. (1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering it.

---

2. The concluding words of the old Section are :—"any interest in any property sold at each sale."

Or. XXI, r. 71 [ = „ = *Or. XXI, r. 74*]

Or. XXI, r. 72 [ = „ = *Or. XXI, r. 75*]

I. "These Rules 71 and 72 are necessitated by the introduction of Rules 42 and 43 in regard to the attachment of produce from land."— *Notes on Clauses.*

II. 1. The provisions contained in these Rules are based on those of Sections 127, 129 and 131 of the Bengal Tenancy Act, VIII of 1885.

2. Under Sub-Rule (1) of Rule 71, agricultural produce should, on the analogy of the Bengal Tenancy Act, Section 129, ordinarily be sold at the place where they are attached, unless a better price is likely to be realized by sale at the nearest place of public resort.

Under Sub-Rule (2), on the analogy of Section 131 of the same enactment, a discretion is allowed to postpone the sale of agricultural produce where such a course is necessary or desirable to prevent the property from being purchased at an inadequate figure.— *India Gazette dated 20-3-1908, Pt. V.*

73. Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be made by public auction, authorise the sale of such instrument or share through a broker.

Negotiable instruments and shares in corporations.

74. (1) Where movable property is sold by public auction the price of each lot shall be paid at the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be re-sold.

Sale by public auction.

(2) On payment of the purchase-money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.

(3) Where the movable property to be sold is a share in goods belonging to the judgment-debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

---

**Or. XXI, r. 73** [=S. 293=*Or. XXI, r. 76*]

1. The words "any public company or" which occurred after the words "a share in" have been omitted.

2. The words "at the market rate of the day" which occurred at the end of the Section after the word "broker" have been omitted.

---

**Or. XXI, r. 74** [=S. 294 =*Or. XXI, r. 77*]

I. *Sub-Rule* (1).—1. The words "Where movable property is sold by public auction" have been substituted for the words "In the case of other movable property."

2. The words "or other person" have been added after the word "officer."

3. The word "re-sold" has been substituted for the words "again put up and sold."

*Sub-Rule* (2).—The words "or other person" have been added after the word "officer."

II. The Indian Special Committee observe:—In this Rule and in Rule 81, "express reference has been made to a re-sale so as to make it clear that the default mentioned in these Rules will attract the consequences indicated in Rule 68. In this connection reference may be made to I. L. R., 7 Cal., 337."

III. *Sub-Rule* (3).—This is new. "An attempt has been made to check the litigation attendant upon the sale of movables belonging to the judgment-debtor and a co-owner. Where property is not of the nature referred to in Clause 296 (=Rule 73), the fairest solution is to concede to the co-owner a right of pre-emption analogous to that conferred by the present Section 310 (=Rule 88)."— *India Gazette dated 21-12-1901, Pt. V.*

**Case Law.**

See Sec. 57.— **3 S. D.**, *187.*

Or. XXI, r. 86.—**38 T. L. R.**, *211* (= **13 T. L. J.**, *479*).

Irregularity not to vitiate sale, but any person injured may sue.

75. No irregularity in publishing or conducting the sale of movable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

Delivery of movable property, debts and shares.

76. (1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is movable property in the possession of some person other than the judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

---

**Or. XXI, r. 75** [=S. 295 = *Or. XXI, r. 78*]

**Case Law.**

1. The decree-holder in a suit attached 800 bags of paddy belonging to the judgment-debtor and in the possession of a stranger on behalf of the judgment-debtor. In the proclamation of sale, the decree-holder stated that the bags contained each 150 lbs. of paddy. The plaintiff purchased them in Court auction and found on measurement the quantity to be less. It was found that there was no fraud on the part of the decree-holder and that the plaintiff had inspected the paddy before purchasing.

*Held.*— The decree-holder (defendant) was not liable for the loss.—**5 T. L. J.**, *96*.

2. Section 295 refers to specific property which can be recovered in specie and is capable of seizure and delivery. A hypothecation right over immovable property cannot be specific within Section 295.

No irregularity in publishing or conducting the sale of movable property can vitiate a sale under Section 295.—**19 T. L. J.**, *363*.

3. See also—

Or. XXI, r. 44.—**11 T. L. R.**, *177*.

" r. 69.—**40 T. L. R.**, *1* (=**14 T. L. J.**, *197*).

**Or. XXI, r. 76** (1) [= S. 296 = *Or. XXI, r. 79* (1)]

" r. 76 (2) [= S. 297 = *Or. XXI, r. 79* (2)]

" r. 76 (3) [= S. 298 = *Or. XXI, r. 79* (3)]

I. The corresponding Sections of Regulation II of 1065 ran as follow :—

"296. *Delivery of movable property actually seized.*—When the propety sold is a negotiable instrument or other movable property of which actual seizure has been made, the property shall be delivered to the purchaser."

"297. *Delivery of movable property to which judgment-debtor entitled subject to lien.*—When the property sold is any movable property to which the judgment-debtor is entitled subject to the possession of some other person, the delivery thereof to the

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

Transfer of negotiable instruments and shares.

77. (1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the Judge or such officer as he may appoint in this behalf may execute such document or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

(2) Such execution or endorsement may be in the following form, namely:

A. B. by C. D., Judge of the Court of (or as the case may be), in a suit by E. F. against A B.

---

purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser."

"298. *Delivery of debts and of shares in public companies.*—When the property sold is a debt not secured by a negotiable instrument, or is a share in any public company, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the company from permitting any such transfer or making any such payment to any person except the purchaser."

II. For Form of Notice to person in possession of movable property sold in execution, see Appendix E, Form No. 32.

For Form of Prohibitory Order against payment of debts to any person other than purchaser, see Appendix E, Form No. 33.

For Form of Prohibitory Order against transfer of shares sold in execution, see Appendix E, Form No. 34.

---

**Or. XXI, r. 77 [= S. 299 = *Or. XXI, r. 80*]**

Section 299 of the old Regulation corresponding to this Rule was as follows:—

(3) Until the transfer of such negotiable instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

Vesting order in case of other property.

78. In the case of any movable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

*Sale of immovable property.*

What Courts may order sales.

79. Sales of immovable property in execution of decrees may be ordered by any Court.

Postponement of sale to enable judgment-debtor to raise amount of decree.

80. (1) Where an order for the sale of immovable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the judgment-debtor, the Court may, on his application, postpone the sale of the property comprised in the order for sale on such terms and for such period as it thinks proper, to enable him to raise the amount.

---

"299. *Transfer of negotiable instruments and shares.*—If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public Company is standing is required to transfer such instrument or share, the Judge may endorse the instrument or the certificate of the share, or may execute such other document as may be necessary.

The endorsement or execution shall be in the following form or to the like effect:—"A. B., by C. D., Judge of the Court of (*or as the case may be*), in a suit by E. F. against A. B."

Until the transfer of such instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same; and any endorsement made, or document executed, or receipt signed, as aforesaid, shall be as valid and effectual for all purposes as if the same had been made or executed or signed by the party himself."

**Or. XXI, r. 78** [= S. 300 = *Or. XXI, r. 81*]

**Or. XXI, r. 79** [= S. 301 = *Or. XXI, r. 82*]

**Or. XXI, r. 80** [= S. 302 = *Or. XXI, r. 83*]

I. 1. *Sub-Rule (1).*—The words "on such terms and" have been added after the words "order for sale."

The Court is thus invested with a discretion to impose terms with regard to a postponement.

(2) In such case the Court shall grant a certificate to the judgment-debtor authorising him within a period to be mentioned therein, and notwithstanding anything contained in Section 56, to make the proposed mortgage, lease or sale:

Provided that all monies payable under such mortgage, lease or sale shall be paid, not to the judgment-debtor, but, save in so far as a decree-holder is entitled to set-off such money under the provisions of Rule 69, into Court:

Provided also that no mortgage, lease or sale under this Rule shall become absolute until it has been confirmed by the Court.

(3) Nothing in this Rule shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of a mortgage of, or charge on, such property.

Deposit by purchaser and re-sale on default.

81. (1) On every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent. on the amount of his purchase-money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold.

(2) Where the decree-holder is the purchaser and is entitled to set-off the purchase money under Rule 69, the Court may dispense with the requirements of this Rule.

---

2. *Sub-Rule* (2).—*First Proviso.*—The words "but save in so far......of Rule 69" are an addition. This is thus explained :—

"Where a decree-holder is entitled to a set-off under Clause 294, Sub-clause (3) [= Rule 69 *Supra*], he does not in practice pay in the monies referred to in Clause 305 [=Rule 80] and should not be required to pay them in under the terms of the Code. A similar saving has been introduced in Clauses 306 and 307 (=Rules 81 and 82)."—

*India Gazette dated 21-3-1903, Pt. V.*

3. *Sub-Rule* (3).—This is new. "In the case of a mortgage-decree, the right of sale does not depend upon the attachment in execution, and it is accordingly proposed to declare such cases to be an exception."—

*India Gazette dated 21-12-1901, Pt. V.*

II. For Form of certificate to judgment-debtor authorising him to mortgage, &c., property, see Appendix E, Form No. 35.

**Case Law.**

An order refusing to postpone a sale under Section 302 of the Civil Procedure Code is not appealable.

The Section vests a discretion in the Judge to postpone the sale under certain circumstances. The mere postponement of the sale from a time fixed to another date cannot amount to a decision staying the execution of a decree within the meaning of Section 238 [new Section 40], and thus make the order appealable.—

**17 T. L. R. App., 23.**

---

Or. XXI, r. 81 [=S. 306=*Or. XXI, r. 84*]

82. The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property :

Time for payment in full of purchase-money.

Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under Rule 69.

---

1. *Sub-Rule (1)*.—The words "or other person" have been added after the word "officer," and the word "re-sold" substituted for the words "put up again and sold."

2. *Sub-Rule (2)*.—This is new. See Note under previous Rule (80).

**Case Law.**

See Or. XXI, r. 69.—**40 T. L. R.,** *245* (=**14 T. L. J.,** *333*).

---

**Or. XXI, r. 82** [=S. 304=*Or. XXI, r. 85*]

I. Section 304 of Regulation II of 1065 was as follows :—

"304. *Time for payment in full*.—The full amount of purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or, if the fifteenth day be a Sunday or other holiday, then on the first office-day after the fifteenth day."

II. The Rule reproduces the corresponding Rule in the British Indian Code, and the changes made in that Rule were thus explained :—"We propose to supersede a decision [Motiram *V.* Bhivraj (1895), I. L. R., 20 Bom. 745] drawing a distinction, which the majority of litigants are unable to understand, between days on which the Court and those on which the Court's office, respectively, is closed or open. In order to prevent further misconception, we propose to recognise, for the purpose of computing the period allowed for payment, no office day on which the Court is not open. We have omitted the provision relative to the occurrence of a Sunday, because the matter is sufficiently covered by the General Clauses Act, 1897, Section 10."—

*India Gazette dated 21-3-1903, Pt. V.*

III. In *re* the Proviso, see note under Rule 80.

**Case Law.**

1. In a Court auction held on 17th Chingom 1087, immovable property was purchased by A. V., and 25 per cent of the purchase money was paid. On 31st Chingom, A. V. tendered the balance of the purchase money due to the Treasury Officer, in pursuance to a chellan issued by the Court. The tender having been made after 3 P. M., though during office hours, the money was not accepted. The money was eventually paid three days after the fifteenth day from the date of auction. The judgment-debtor having applied to set aside the sale, on the ground of its being void :

*Held*.—There having been a valid tender of the amount due within fifteen days from the date of sale, to the Treasury Officer, who wrongly refused to accept the amount, the omission to pay within 15 days was no fault of the auction purchaser. The sale was valid.— **4 T. L. J.,** *261*.

2. See also—

Or. XXI, r. 83.—**6 T. L. R.,** *82*.

---

83. In default of payment within the period mentioned in the last preceding Rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

Procedure in default of payment.

---

**Or. XXI, r. 83** [=S. 305=*Or. XXI, r. 86*]

I. Under Section 305 of Regulation II of 1065 the deposit *shall* be forfeited to Government. The words "may, if the Court thinks fit,"—have been substituted for the word "shall" which occurred just before the words "be forfeited."

II. The change made in the British Indian Rule, which is reproduced here, was thus explained by the Indian Special Committee:—"The Committee have altered this Rule in order to prevent its being obligatory on the Court to forfeit the deposit in every case. The Rule as it stands at present has caused hardship in certain circumstances, *vide* the case of Sambasiva Ayyar V. Vydinada Sami (I. L. R., 25 Mad., 535)."

### Case Law.

**1.** When public servants (whether they belong to the execution or judicial branches of the administration) act in good faith on behalf, and in the interest, of Government in the discharge of their duties, the Sirkar is bound to defend them, especially in a case like this where they have taken the advantage resulting from the official act of their servants.

The duties of a Civil Court executing a decree are ministerial. Hence, the order of forfeiture passed under Section 238 of the old Civil Procedure Code, is especially so, as the Court, on plaintiff's default to pay in the remainder of the purchase money, has no option but to carry, on its own motion, the deposit to the credit of Government. No appeal is allowed against this order; and there is nothing in the Code or n any other Regulation barring the ordinary right of action in such cases, the rule that bars suits brought to question judicial acts or proceedings, not clearly applying to orders under Section 238 of the old Civil Procedure Code (Regulation II of 1037).

Where the law appoints a time for any act being done, it is not in the power of the Courts, much less in the power of clerks, to postpone such time and make fresh appointments so as to bind the parties.

The absence of proper arrangements for payments into Court of sums due by parties during the absence of the presiding Judges cannot prejudice the parties nor work a forfeiture of their rights. It was the omission of the Court to make proper arrangements for payments being received that prevented the plaintiff in the case, from making the payment on the due date.—**6 T. L. R.,** *32.*

[Note the change in the new Rule.]

**2.** In execution of a decree, certain immovable property was sold and purchased by the decree-holder. On the day of sale, the auction-purchaser deposited 25 per cent. of the purchase money, but failed to deposit the balance within 15 days of the sale, as enjoined by Section 305, C. P. C. The decree-holder, auction-purchaser, put in a petition 25 days after the auction-sale stating that the decree had been satisfied, and prayed that the sale be cancelled and the amount deposited by him be refunded to him. The Munsiff refused to grant his prayer for refund of deposit.

*Held.*—The case came clearly within the provisions of Section 305, and it was the duty of the Civil Court to forfeit the amount

84. Every re-sale of immovable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

Notification on re-sale.

85. Where the property sold is a share of undivided immovable property and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

Bid of co-sharer to have preference.

---

deposited to the Sirkar in accordance with the provisions of the Section.—

**32 T. L. R.**, *139*.

[See Note under the previous case.]

**3.** Where a purchaser at a Court sale held by the Additional District Munsiff of Tiruvella deposited 25 per cent. of the purchase money at the date of the sale and applied for chellan permitting him to deposit the balance to the Tiruvella Munsiff's Court on the due date, which was the day on which the Munsiffs' Courts re-opened after the midsummer recess of 1094 and from which date the Additional Munsiff Court of Tiruvella was abolished and a new Munsiff's Court opened at Changanacherry with jurisdiction over the locality in which the property which formed the subject of sale was situate, the application was returned for presentation to the proper Court. The application was presented to the latter Court the next day and the balance 75 per cent. of the purchase money was duly deposited. The District Munsiff held that the purchaser forfeited the 25 per cent. of the purchase money for failure to deposit the balance on the due date. On revision:

*Held.*—Notwithstanding the fact of the territorial readjustment, the Tiruvella Court continued to be a proper Court, though perhaps not the only proper Court in which the application relating to the execution of the decree in question was to be presented, at least till the execution proceedings were formally transferred to the Changanacherry Munsiff's Court. The plaintiff's failure, therefore, to deposit the balance of the purchase money on the due date not having been due to any fault or negligence on his part, the order of the lower Court declaring that the petitioner forfeited the amount of 25 per cent. of the purchase money deposited by him on the date of the Court sale could not be upheld.

**37 T. L. R.**, *16*.

**4.** Section 305 is imperative in its terms, and no Court has jurisdiction to deprive the Government of the benefit which it gets under the Section. The fact that, under Order XXI, Rule 83, a discretion is given to the Court in the matter, cannot affect the interpretation of Section 305.—

**19 T. L. J.**, *681*.

**5.** See also—

Or. XXI, r. 86.—**30 T. L. R.**, *192* (=**4 T. L. J.**, *398*).

---

**Or. XXI, r. 84** [= S. 306=*Or. XXI, r. 87*]

In this Rule, the word "proclamation" has been substituted for "notification."

---

**Or. XXI, r. 85** [=S. 307=*Or. XXI, r. 88*]

The corresponding Section of the old Regulation was as follows:—

"307. *Co-sharer of share of undivided estate sold in execution to have preference in bidding.*—When the property sold in

86. (1) Where immovable property has been sold in execution of a decree, any person, either owning such property or holding an interest therein by virtue of a title acquired before or after such sale, may apply to have the sale set aside on his depositing in Court,—

Application to set aside sale on deposit.

(a) for payment to the purchaser, a sum equal to five per cent. of the purchase-money, and

(b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder:

Provided that no sale of immovable property shall be confirmed until the final result of any appeal preferred against the decree in execution of which the sale was made is known. If such decree be finally not confirmed on appeal, the sale shall be set aside:

Provided also that, when several items of properties are sold separately, the sale of one or more of such items may be set aside on depositing in Court the amount of the purchase-money for the items the sale of which is sought to be set aside and a sum equal to five per cent. of that amount, and the balance, if any, of the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, still remaining unrealised.

(2) Where a person applies under Rule 87 to set aside the sale of his immovable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this Rule.

(3) Nothing in this Rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

---

execution of a decree is a share of undivided immovable property, and two or more persons, of whom one is a co-sharer, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the co-sharer."

Or. XXI, r. 86 [ = S. 307-A
= *Or. XXI, r. 89*]

I. 1. The Section in Regulation II of 1065 corresponding to Rule 86 is 307-A. The Section was taken from the British Indian Amending Act V of 1894 and was added by the amending Regulation II of 1070. The

reason for this addition was thus explained in the Statement of Objects and Reasons :—

"It supplies a want now sorely felt by the Courts in connection with the sale of immovable property. As the law now stands, the Courts have no power to refuse the confirmation of a sale made in execution of a decree, even on payment by the judgment-debtor of the whole amount due, together with interest. This Section gives the requisite power to cancel Court-sales on payment to the decree-holder, of the amount due, and to the purchaser, of 5 per cent. of the purchase money as compensation for the loss he sustained by the purchase."

The Section thus added ran as follows :—

"307-A. *Application of judgment-debtor to set aside sale on deposit of debt.*—Any person whose immovable property has been sold under this Chapter may, at any time within thirty days from the date of sale, apply to have the sale set aside on his depositing in Court—

(*a*) for payment to the purchaser, a sum equal to five per centum of the purchase-money, and

(*b*) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.

If such deposit is made within the thirty days, the Court shall pass an order setting aside the sale :

Provided that if a person applies under the next following Section to set aside the sale of his immovable property, he shall not be entitled to make an application under this Section.

Nothing in this Section shall be construed to relieve the judgment-debtor from any liability he may be under, in respect of costs and interest not covered by the proclamation of sale."

2. (1). "The object of the Section was to extend the period during which the judgment-debtor may discharge his liability by thirty days beyond the date of sale and is only a modification of the way in which the decree-holder may obtain the fruits of his decree. The privilege, whether regarded as a substantive right or a matter of procedure, is one exclusively belonging to any person whose immovable property has been sold."— **13 T. L. R., *126*.**

(2) The Legislature evidently intended to give the judgment-debtor a last opportunity to ward off the sale of his property by some arrangement, including a private sale if possible, and such arrangements are usually more beneficial to the owner than a Court-sale.

II. In the original Bill, Rule 89 of the British Indian Code was adopted *in toto*. That Rule does not contain the two Provisos now found in Sub-Rule (1), and also the words "or after" now occurring before the words "such sale" in the same Sub-Rule. The Notes on Clauses said:—

"There is a change in the language proposed to be made in lieu of Section 307-A of the existing Code. Judicial decisions have laid down that no alienee subsequent to the sale should be permitted to avail himself of the grace allowed by this Section. The judgment-debtor himself, or any one whose interest has been jeopardized by the sale, may be allowed to come within the period of grace and avoid the sale. There is no reason, however, why the judgment-debtor should be given the right to choose a purchaser in defeasance of the rights of the auction purchaser. There being some divergence of views on this matter, however, the proposal is to accept the view restricting the right to the judgment-debtor to reap some benefit for himself only."

III. The words "or after" in Sub-Rule (1) were inserted by the Select Committee "to give express effect to the interpretation of the present Section 307-A by the High Court."

IV. For the omission of the words "at any time within thirty days from the date of sale" which occurred between the words "may" and "apply" in the first Para of the old Section [Sub-Rule (1)], see Article 151 of the Limitation Regulation which provides the same period of limitation.

V. The Select Committee also added the first Proviso to Sub-Rule (1). This corresponds to the second Para of Section 311 which was as follows :—

"No sale of immovable property shall be confirmed until the final result of any appeal preferred against the decree in execution of which the sale was made is known. If such decree be finally reversed on appeal, the sale shall be set aside."

See Note under Rule 89, *Infra*.

VI. The second Proviso to Sub-Rule (1) was added by the Council on the motion of a Non-official Member who said :—

"The Section is all right if the properties or several items of properties are sold in one lot. But if properties or several items of properties are sold separately, that is, in two or more lots, the Section does not provide for setting aside the sale of one or more of such items.

The object of my amendment is to allow such relief as well. Suppose a *Jenmi* sues for the recovery of arrears of rent etc., due on a Kanom document which covers several items of property some of which may be outstanding on mortgage, while others have been purchased by others on the date of the suit; the *Jenmi* while he sues makes such mortgagees and also subsequent purchasers as parties and obtains a decree. The properties are sold separately, *i. e.*, in two or more lots. If any of the defendants, say, the mortgagee or the subsequent purchaser or the decree debtor himself wants to set aside the sale in respect of one or more items of properties sold, he is not allowed under this Rule to do so. On the other hand, considerable difficulty is experienced by the decree-debtors and other persons to whom the property belongs on account of this Rule. Sir, I am aware of the great difficulties experienced by people. Suppose 10 items of property are sold for the decree debt due by a particular defendant. He is unable to raise the whole of the money mentioned in the proclamation and deposit it in Court so that he may be in a position to set aside the sale of one lot of the property sold. Of course, he may lose the other lots of property. At least one lot he may be able to save which he will not be able to do now. Apart from these difficulties, the High Court is inclined to support my position. There is a ruling in 10 T. L. R., page 31, which allows the relief that I plead for in my amendment. That was a case to set aside the sale of one of the several properties that were sold in auction. The learned Judge in reversing the order on appeal said that where properties had been sold in separate lots, an application to set aside the sale on depositing the amount of purchase money of such lots would lie. That was a decision of the District Judge which was confirmed by the High Court who observed that, in consideration of the facts of the case, they were inclined to the conclusion of the District Judge rather than to that of the Munsiff. This ruling has also been followed in 12 T. L. J. page 34 and 13 T. L. J. page 307. In 13 T. L. J., what is said is this. 'In Madhavan Pillai *v.* Sastavu (10 T. L. J. 31) this Court in a case on all fours with the present held that when, in execution of one decree, property was sold in two or more lots, judgment-debtor or other person whose property had been sold could apply to have the sale set aside as regards one or more lots without having the sale set aside as a whole.'"

The Official Member in charge considered the provision unnecessary, "because, the High Court has been consistently ruling all

along that, in the case of a decree-holder, it is open to the judgm ent-debtor to deposit the amount due after giving credit to the amount that has been realised by the auction sale. When a decree-holder purchases property in auction, they say it must be taken that, as soon as each auction sale is knocked down, the decree debt is reduced to that extent; on the basis of that principle they say that it is open to the judgment-debtor to deposit the amount of any item of property that he may seek to set aside, *i. e.*, if five items of properties are sold, the amount of the first three items will be reduced or the amount for the last two items may be reduced and the amount that he purchased for should be taken to have been paid towards the decree amount and therefore the decree amount is reduced to that extent. It may or may not be that the amount is realised only the last day. That being the case, it may not be possible to apply it.

We all know that, when an auction comes to an end, a Judge insists that the whole of the amount should be realised and so it is sold at a higher amount. So that, it is left to the judgment debtor to pick and choose what particular item he should choose and what particular amount he should reject. So in the case of the decree-holder, the rulings of the High Court have been consistent. The existing section has been consistent and there has been no conflict of rulings. If Rule 86 (1), Order 21, is to be amended, it can be done at any time as the Vakils practising in the High Court are to be members of the Rule Committee and it is open to them to revise it in any way they like. Therefore, instead of putting in a Rule which is unworkable, and which is not necessary, I think it may be left to the Rule Committee to amend it if necessary."

After some discussion, the Proviso, which was amended by the addition of some words, was adopted by the House.—

*L. C. P. dated 13-2-1925.*

**Case Law.**

**1.** In computing the period of limitation prescribed under Section 307-A of the Civil Procedure Code, for an application to set aside a sale, the period during which, the Court was closed must be excluded.—

**14 T. L. R. App., *56*.**

**2.** When the owner of immovable property applies under Section 307-A to have a sale of the property set aside he is under a liability to deposit a sum equal to five per cent. on the purchase money for payment to the purchaser, even when the land has been purchased by the decree-holder.

The judgment-debtor's right to get the sale cancelled on his depositing the five per cent. is not affected by a mistake committed by the Court itself (the mistake in the case being the non-receipt of the five per cent. on the ground that it was not usual in the case of a purchase by the decree-holder himself).— **15 T. L. R. App., *52*.**

**3.** An appeal lay under Clause 16, Section 557, C. P. C., [Section 82 and Or. XLII, r. 1] from orders passed under Section 307-A refusing to set aside the sale of immovable property in execution.

The intention of the Legislature was to confer the right of appeal from orders refusing to set aside or confirming a sale, is clear from the terms of Section 557, and there is no reason why this intention should not be carried out by the Courts. The effect of the amended Section 307-A is to create a fresh ground for setting aside a court sale, at the instance of the party whose immovable property is sold in execution under orders of Court and orders passed under Section 307-A are as much appealable as orders passed under other Sections for setting aside or refusing to set aside a sale. It is the substance rather than the letter of the law which has to be looked to in such cases, and when the decision or order of a Court of a particular import is made expressly appealable, the grounds on which the decision or order is made do not affect the right of appeal.

What the Appellate Courts have to see is whether a decision on a particular subject-matter is made appealable by law, and if so, the Court is bound to entertain the appeal irrespective of the ground on which the order is purported to be made.— **16 T. L. R. App., *1*.**

Fol.—21 T. L. R., 196.
Ref.—2 S. D., 368.

**4.** An application by a purchaser from a judgment-debtor prior to attachment for setting aside a court sale on the terms of his paying the judgment-debt under protest and not unconditionally is not an application under Section 307-A. A deposit to be effectual under the Section must be made in such a manner as to enable the decree-holder to unconditionally apply the deposit in satisfaction of the decree-debt. The fact that the purchaser happened to be the decree-holder does not deprive the latter of his full rights as purchaser.— **16 T. L. R. App. *21*.**

Ref.—29 T. L. R., 14
(= 3 T. L. J., 223).
19 T. L. J., 360.
Ref.—24 T. L. R., 41.
11 T. L. J., 136.

**5.** The words "whose property is sold" in Section 307-A do not apply to a mortgagee of the property.

Where a District Judge granted the application of a mortgagee under the said Section for permission to deposit the purchase money for payment to the purchaser:

*Held.*—The Judge was wrong in granting the prayer.— **17 T. L. R. App., *3*.**

Overruled.—25 T. L. R., 240.
Ref.— 24 T. L. R., 41.
18 T. L. J., 1162.

**6.** Section 307-A of the Civil Procedure Code refers only to applications made by the judgment-debtors and others who can be said to have ownership of the property sold and does not apply to a mere attaching creditor who has no such ownership.— **18 T. L. R., *126*.**

Ref.—24 T. L. R., 41.

**7.** After the Court-auction and before the confirmation of the sale of an immovable property, the judgment-debtor conveyed it by private sale to a third party who made the deposit in Court under Section 307-A as the agent of the judgment-debtor. The purchaser contended that the sale should not be cancelled, but the District Judge disallowed the contention.

*Held.*—The District Judge was right, as the deposit was such as to entitle the judgment-debtor to make an application under Section 307-A.— **19 T. L. R., *118*.**

Ref.—24 T. L. R., 41.
25 T. L. R., 240.

**8.** A decree-debtor first applied to set aside an attachment under Section 308 on the ground of irregularity, etc. When the application was pending, he put in another application for setting aside the sale under Section 307-A and deposited the decree amount. He also subsequently withdrew his first application under Section 308. On the contention of the decree-holder that the proviso to Section 307-A precludes the decree-debtor from making the second application, as he had already applied under Section 308:

*Held.*—The word "applies" in the proviso means not merely presenting an application but also the prosecution of it and the withdrawal of the first application before the disposal of the second removed the bar under the proviso.— **20 T. L. R., *186*.**

Ref.—24 T. L. R., 41.
Dist.—29 T. L. R., 14
(= 3 T. L. J., 223).
11 T. L. J., 136.

**9.** An act of limitation being restrictive of the ordinary right to take legal proceedings must, when the language is ambiguous, be construed strictly, *i. e.*, in favour of the right to proceed.

On the 18th Edavom 1079, a property was sold in execution of a decree and on the 19th Mithunam 1079 the defendant applied under Section 307-A, Civil Procedure Code, to have the sale set aside. Calculating the date of sale also, the Munsiff held the application as time-barred and dismissed it. The District Judge reversed the Munsiff's order.

*Held* (confirming the District Judge's order).—The date of sale should be excluded, and in legal phraseology exclusion and not inclusion seems to be the connotation of the word "from."— **21 T. L. R.,** *196.*

**10.** A hypothecated his property to B in 1074 and sold it to C in 1075. In 1081, B obtained a decree against A and sold and purchased the property in execution. Before the confirmation of sale, C deposited the decree amount in Court under Section 307-A and put in a petition not to allow the decree-holder to draw the money as he intended filing a fresh suit. This petition was rejected by the lower Court.

*Held.*—No appeal lay against such order, as the appellants being vendees, *prior to decree* and not *after it*, have no *locus standi*, under Section 307-A, for they are not entitled to come in under Section 238 [new Section 40] read with Section 307-A.

[Any person whose interest in immovable property is bound by the sale may apply under Section 307-A, though he be no party to the suit or to the decree under which the sale took place. The Section explicitly speaks of "any person whose immovable property has been sold under this Chapter", *i. e.*, Chapter XIX relating to the execution of decrees.

Unquestionably, the judgment-debtor may apply, so also any person who has purchased his right, title and interest in the property after decree, because in spite of such purchase the vendee will be bound by the decree in execution, and to the extent of the interest so purchased, he will stand in the shoes of the judgment-debtor].—

**24 T. L. R.,** *41.*

**11.** The petitioner's application praying for issue of Chellan to deposit the purchase-money was sufficient to enable the Court to pass an order under Section 307-A for setting aside the sale, if the deposit had been made within 30 days from the date of the auction sale.

" The essential upon which the action of the Court is to depend is the deposit within thirty days and not the fact of the application being made within that period." (7 B. L. R., 263). This construction of the language of the Section is no doubt rather strained; but having regard to the design of the Legislature in enacting Section 307-A, *viz.*, the relief of judgment-debtor and persons claiming under them on satisfaction of the decree-debt even after execution has proceeded up to sale of property, the most liberal construction of the provision should be adopted.

The fact of there having been no formal application made within 30 days for the cancellation of the sale is not a fatal defect disentitling the appellant to the relief provided by the Section.— **24 T. L. R.,** *100.*

Com.—13 T. L. J., 273.
Ref.— 43 T. L. R., 52
(= 17 T. L. J., 1).

**12.** The words "a person whose immovable property has been sold" in Section 307-A, of the Code of Civil Procedure includes also a mortgagee of immovable property. This interpretation is the only correct interpretation in accordance with the spirit and policy of the law enacted in the Section. To interpret the word "person" as meaning only the judgment-debtor would be unduly narrowing the scope of the Section and violating all correct canons of interpretation (F. B.).

*Held also* (by a Division Bench—*Ramachandra Rao and Sankara Menon, JJ.*).—The words "whose immovable property has been sold" should be so construed as to include cases where a party acquires an interest in the property after the auction

sale and before the expiration of the thirty days.

There is nothing to prevent the judgment-debtor from creating an interest in the property in another till the sale is confirmed. Until confirmation, it is open to the judgment-debtor to transfer his interest so as to entitle the party to whom the interest is transferred to apply under the Section.—

**25 T. L. R.,** *240.*

[Note the effect of the new Rule.]

**13.** In a suit upon a hypothecation bond executed by defendants 2 to 4 in favour of the 1st defendant, the hypotheca was sold in Court auction. At the time of the auction, the property fell to the share of the plaintiff who deposited the decree amount under Section 307-A.

*Held.*—The payment by the plaintiff was not a voluntary payment and the plaintiff is entitled to recover the amount from the defendants.— **2 S. D.,** *218.*

Overruled.—19 T. L. J., 285.

**14.** In all cases, the purchaser at Court sale is entitled to notice when applications are presented for setting aside the sale, as he is always highly interested in opposing the application.— **2 S. D.,** *240.*

**15.** The deposit of the sale proceeds in Court does not constitute "receipt" by the decree-holder within the meaning of the words "less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder" in Clause (*b*), Section 307-A. The receipt therein contemplated is actual receipt.—

**27 T. L. R.,** *118*
**(= 2 T. L. J.,** *362***).**

Ref.—10 T. L. J., 31.
12 T. L. J., 84.
13 T. L. J., 438.

**16.** Where a person put in a petition for cancelling a Court-sale and the major portion of the petition related to reliefs contemplated under Sections 308 and 310, [= Or. XXI, rr. 87 & 88], but towards the end thereof it was stated that the petitioner was willing to make the deposit as provided for under Section 307-A and to get the sale cancelled:

*Held.*—The petitioner having once elected to pursue the remedies provided under Sections 308 and 310 could not be allowed to fall back upon Section 307-A. There was also the fact that the offer to deposit the sale amount, was, under no circumstances, unconditional.— **29 T. L. R.,** *14*
**(= 3 T. L. J.,** *223***).**

Ref.—11 T. L. J., 186.
Fol.—19 T. L. J., 360.

**17.** In execution of a decree certain immovable properties of the judgment-debtor were sold in auction and purchased by the petitioner who at once deposited 25 per cent. of the purchase money. Before the expiry of 15 days from the date of sale, the judgment-debtor deposited the decree-amount and 5 per cent. of the purchase money under Section 307-A, and the sale was, therefore, set aside. The purchaser in Court auction then put in a petition for refund of the money deposited by him and for payment to him of 5 per cent. of the purchase money paid into Court by the judgment-debtor. The District Judge rejected the purchaser's claim for refund on the ground that because he did not deposit the balance of the purchase money before the expiry of 15 days from the date of sale, the 25 per cent. that he had deposited was forfeited to Government under Section 305. The prayer for the payment of the 5 per cent. was also disallowed.

*Held.*—The omission on the part of the purchaser to deposit the balance of the purchase money before the expiry of the prescribed period did not entail forfeiture of his right to refund of the sum deposited by him. As Section 307-A rendered it obligatory on the Court to set aside the sale on the deposit of the judgment-debt and the five per cent. of the purchase-money,

there was absolutely no use in the auction-purchaser depositing the balance of the purchase-money before the expiry of 15 days from date of sale.

When the contest in regard to the 5 per cent. of the purchase-money was between the purchaser and judgment-debtor, the equities were in favour of the purchaser as that amount was expressly stated to be "for payment to the purchaser" under Section 307-A of the Code and meant as compensation to him for being deprived of the property purchased by him in Court auction.— **30 T. L. R.**, *192* (**=4 T. L. J.**, *293*).

Dist.—32 T. L. R., 129.

**18.** A judgment-debtor who deposits the decree amount and 5 per cent. of the purchase-money during the pendency of an appeal preferred by him against the order rejecting his petition and allowing execution to proceed must be deemed to have made the deposit under protest and to such a case Section 307-A, C. P. C., has no application.— **31 T. L. R.**, *83*.

Ref.—39 T. L. R., 211 (= 14 T. L. J., 207).

**19.** Where a judgment-debtor has not, within thirty days from the date of sale, deposited in Court the amounts specified in Section 307-A, but has deposited within the prescribed period a sum calculated by some officer of the Court as the sum to be deposited in respect of such amounts, which was less than the amount that should have been deposited and there is nothing to show there was any mistake of the Court by which the judgment-debtor was induced to deposit an insufficient amount :

*Held.*—The sale ought not to be set aside.

The mistake in calculation was one committed by the execution clerk and not the mistake of the Court. It is no part of the duties of the execution clerk, either under the Code or under the Circulars of the High Court, to make a calculation of the amount to be deposited under Section 307-A. It was irregular on his part to have made any calculation at all, and if he makes a wrong calculation and the judgment-debtor chooses to rely and act upon it, the latter does so at his peril.— **35 T. L. R.**, *158*.

Ref.—18 T. L. J., 1162.

**20.** The 1st defendant and one D hypothecated Whiteacre and Blackacre to X ; and afterwards, D alone without mentioning the first charge hypothecated Whiteacre to Y. X then obtained a decree on his bond against the 1st defendant and D and the hypotheca. To this, Y was not a party. Y, then, obtained a decree on his bond against Whitheacre and in execution purchased it himself without mentioning the first charge. To this X was not a party. While X sought to sell Whiteacre and Blackacre in execution of his decree, Y applied for Whiteacre being excluded from the sale, inasmuch as he had in execution of his decree become its purchaser. The application was rejected ; and both the properties were sold in execution of X's decree. Before the confirmation of the sale, the plaintiff (Y's son) deposited the decree amount and had the sale set aside. The suit was for recovering the amount from the 1st defendant personally and from Blackacre and the assets of the deceased D. The primary Court dismissed the suit, holding that Section 69 of the Contract Act governed the case :

*Held* (on special appeal).—(1) The deposit (and the consequent cancellation of the sale) restored Blackacre to the original owners, namely, the 1st defendant and D and rendered the right of Y over Whiteacre indefeasible, and consequently the right of Y after making the deposit was only to claim contribution from Blackacre which his deposit had saved for the original owners, according to the respective value of the two estates.

(2) Inasmuch as the judgment debtor's personal liability under the decree obtained by X had been wiped out by the Court

sale, it could not be said that Y paid the money which 1st defendant and D were bound by law to pay; and hence the principle of Section 69 of the Contract Act could not apply.

(3) On the principle of Section 70 of the Contract Act, the 1st defendant and D would only be bound to make compensation to the extent to which the deposit had benefited them, *i. e.*, in so far as Blackacre had been restored to them.

(4) In any view, the plaintiff was only entitled to claim a share of the money deposited by him in Court.— **36 T. L. R.,** *16.*

**21.** (1) Provided the strict terms of Section 307-A are complied with, it is not necessary for one who is interested in setting aside the sale of one or more of several lots sold under one proclamation, to ask to have the whole sale set aside.

(2) Amounts which the decree-holder is in a position to set off immediately against the decree amount should be treated as money received by him under the terms of Section 307-A.— **10 T. L. J.,** *31.*

Ref.—38 T. L. R., 148
(= 13 T. L. J., 307).
12 T. L. J., 34.
18 T. L. J., 1162.
Appr.—13 T. L. J., 438.

**22.** A person, in whose favour a sale deed has been executed but not registered before a Court sale of the property covered by such deed of sale, is one whose immovable property has been sold under Section 307-A, if the deed is duly registered subsequent to the Court sale. The operation of a sale deed is from the date of its execution. Even before registration, the purchaser has an equitable interest in the property as would give him a right to save it under Section 307-A.— **10 T. L. J.,** *133.*

**23.** Deposit, which was conditional when originally made cannot, by the subsequent withdrawal of the condition, become valid as from the date the money was originally paid into Court. The subsequent withdrawal of the condition makes the deposit available to the purchaser and decree-holder only from the date of such withdrawal and the deposit becomes, in this respect, a deposit in conformity with the Section only from such date. Such date alone can be regarded as the date of a valid deposit under the Section.

[A deposit under Section 307-A, in order that it may be a valid deposit, must be unconditional, because the deposit is to be made for payment to the purchaser and the decree-holder. When, therefore, a deposit is made with a condition that the amount shall not be drawn out at once, but shall be retained in Court until a certain event happens, it is not a good deposit under the Section].— **11 T. L. J.,** *136.*

Fol.—19 T. L. J., 360.

**24.** On the 30th Kanni 1096, items 1, 3, 4, 5, 6 and 7 in the proclamation schedule were sold in execution of a decree against the counter-petitioner. Items 3, 5, 6 and 7 were purchased by the petitioner and item 4 by the decree-holder who had obtained permission to have the purchase-money for that item set off *pro tanto* against the judgment-debt due to him. There still remained a small balance of the judgment-debt due to him to be realised and therefore item 1 was next auctioned and the petitioner purchased that also for 7000 Fanams. On the 23rd Thulam 1096, (before the sales had been confirmed), the counter-petitioner applied for the cancellation of the sale of item No. 1 on depositing the balance of the judgment-debt, after deducting therefrom the amount realised by the sale of items 3 to 7, together with the usual commission on the purchase-money paid for item No. 1. This application of the judgment-debtor was resisted by the auction purchaser on the ground that the judgment-debtor would be entitled to the relief

claimed only if he deposits the entire judgment-debt or at least that amount less the sum for which the decree-holder himself purchased item No. 4 together with the usual commission on the whole of the purchase-money advanced by the auction-purchaser.

*Held.*—The purchase-money realised by the sale of item No. 4 may be treated as having been received by the decree-holder, but the amount realised by the sale of the other items stands on a different footing. This money did not become money at the disposal of the decree-holder till the sales were confirmed, and hence cannot be treated as having been received by the decree-holder under Section 307-A.

Therefore the decree-debtor was, in order to obtain the benefit of the Section, bound to deposit the entire judgment-debt less the price paid by the decree-holder for item No. 4.— **12 T. L. J.,** *34.*

Ref.—38 T. L. R., 148
(=13 T. L. J., 307).

**25.** When the sale of one or more of several items sold under one proclamation is sought to be set aside under Section 307-A, the amount that need be deposited under Clause (*a*) of that Section is only 5 per cent. of the purchase money for the items, the sale of which is sought to be set aside, and not 5 per cent. of the purchase money for all the items.— **38 T. L. R.,** *148*
**(= 13 T. L. J.,** *307*).

**26.** In execution of a decree, properties movable and immovable of the judgment-debtor were sold in Court auction and purchased by the decree-holder. The judgment-debtor put in a petition praying to have the auction sale set aside on deposit of the decree amount and commission.

*Held.*—The petition is one under Section 307-A, and the auction sale of the immovable property could be set aside. But the sale in respect of the movable property could not be set aside, as it had become absolute under Section 294, C. P. C. [= Or. XXI, r. 74], as soon as the purchase money had been paid.— **38 T. L. R.,** *211*
**(= 13 T. L. J.,** *479*).

**27.** Where in execution of a decree, the decree-holder having brought certain property to sale and purchased it himself, certified subsequent satisfaction of his decree otherwise and applied that the sale be set aside:

*Held.*—Sale is cancelled on the ground that the satisfaction of the decree certified by the decree-holder resulted automatically in the annulment of the execution sale. A decree-holder by becoming an execution purchaser neither becomes the full owner of the property purchased nor ceases to be the decree-holder altogether. In spite of the Court sale, the judgment-debtor has sufficient interest in the property to apply under Section 307-A and Section 308 [=Or. XXI, r. 87], while the decree-holder-purchaser is not debarred from taking steps to set aside the sale under Section 310 [=Or. XXI, r. 88] or from certifying satisfaction of the decree at any time before the sale is made absolute.

The direction to the Court contained in Section 291 [=Or. XXI, r. 69] is not peremptory as regards the point of time when it should be carried out, inasmuch as it does not use the word 'forthwith' or 'immediately', and is dependant on the eventuality of the sale being confirmed and made absolute.
**38 T. L. R.,** *241*
**(=12 T. L. J.,** *162*).

**28.** Three items of property belonging to defendants 1 and 2 were charged by the decree in the case. The 3rd defendant having obtained a mortgage of item 2 from the 2nd defendant, the 3rd defendant was made a party to the case. Subsequently, in execution of the decree, item No. 3 was sold in Court auction on 3—4—1095. The 3rd defendant deposited the decree amount into Court and applied under Section 307-A, to set aside the auction sale. The auction-purchaser objected on the ground that the 3rd defendant had no *locus standi* to make

such application. The trial Court set aside the auction-sale, but the Appellate Court upheld the objection of the auction purchaser.

*Held* (in second appeal).—(1) The 3rd defendant cannot be said to be a "person whose immovable property has been sold" within the meaning of Section 307-A, as he had no interest whatever over item No. 3 which had been sold. The Section cannot be so interpreted as to allow any person who has no interest whatever in the properties sold, to apply under that Section.

(2) Even assuming that the 3rd defendant was acting as the agent of the 2nd defendant (as to which there was no evidence in the case), the application could not be regarded as having been made by the 3rd defendant in that capacity, as it was unaccompanied by any writing to show that he was a recognised agent as defined under Section 33 C. P. C. [= Or. III, r. 2] empowered to make an application under Section 32, C. P. C. [= Or. III, r. 1].

(3) The authority under Section 31, C. P. C. (=Or. I, r, 12], must be in writing signed by the party giving it and attested by 2 witnesses and effected before the act is done by the person authorised.—

**13 T. L. J.**, *273.*

**29.** In execution of the decree in O. S. No. 32 of 86, seven items of properties were sold in auction on 10-3-1097. Items 3, 4 and 5 were purchased by the assignee, decree-holder (who was the respondent in these three appeals), for Rs. 30,000 and the remaining four items for Rs. 51,200 by strangers, not parties to these proceedings. Subsequent to the auction sale, the judgment-debtor who is the appellant in A. S. No. 280 sold items 3 and 4 to one Gulam Hussain Jeevaji Sait (appellant in A. S. 238) and item 5 to one Kurien Mathew (appellant in A. S. 243) and on 10-4-97, these 3 appellants deposited in Court Rs. 30,000 the auction amount, Rs. 1,500 commission and Rs. 400 the balance of the decree amount as estimated by them and applied by separate petitions under Section 307-A to have the auction sale of items 3, 4 and 5 set aside.

The amount of Rs. 51,200 fetched by the auction sale of items 1, 2, 6 and 7 was also in Court on 10-4-97 and it was admitted that this amount had been received by the assignee, decree-holder, sometime after 10-4-97.

The question arose whether this amount of Rs. 51,200 came within the meaning of the expression "any amount which may since the date of such proclamation of sale have been received by the decree-holder" in Section 307-A, and as such, the appellants could claim the benefit of the Section and have the sale set aside.

*Held.*—The words "may have been received" in Section 307-A appear to imply that no impediment existed or could have been placed by any person or by the Court in the exercise of any discretion vested in its preventing the receipt of the money by the decree-holder, and if the money had not been actually received or given credit to by the decree-holder, it was due to the default or otherwise unjustifiable conduct on the part of the decree-holder himself.

This amount of Rs. 51,200 can in no proper sense be treated as money which may have been received by the decree-holder. The Court may not dispose of the application for withdrawal within the 30 days, or it may, in making the order within the 30 days, allow the decree-holder to draw the amount only on certain conditions to be obeyed by the decree-holder, in which cases, there cannot be a substantial compliance with Section 307-A.

The fact that, in this case, the appellants took the risk in taking credit for Rs. 51,200 as a *pro tanto* satisfaction of the decree and as events subsequently turned out, they acted rightly in taking the risk, the assignee, decree-holder, having subsequently withdrawn this amount, cannot affect the question.

The provisions of Section 307-A are no doubt primarily intended to give relief to persons whose immovable properties have been sold in court auctions and give them an opportunity to save their properties from passing into the hands of others.

The principle underlying Section 307-A is that, in order to enable the judgment-debtor to claim the indulgence available to him under Section 307-A, it is necessary that he must do or have done everything that is necessary to wash off or undo completely the injurious effect of the court sale that had already taken place in regard to his properties. In enacting the provisions of Section 307-A, the Legislature has held the scales even as between the judgment-debtor and the decree-holder, for, if the judgment-debtor wants to have his properties freed from the court sale, it stands to reason that he must put the decree-holder in a position to get the full amount due to him without subjecting him or appearing to subject him to any risk.

It has also to be noted that the auction sale does not become absolute until confirmed ; till then it is a provisional one and as such the decree-holder has no right to receive the auction sale amount until the sale has been confirmed.

If the auction-purchaser intimates in writing to the Court within 30 days from the date of the sale that he does not mean to apply to set aside the auction sale under Section 310 C. P. C. [ =Or. XXI, r. 88 ], and the judgment-debtor also states that he does not mean also to impeach the sale on any of the grounds open to him under the Civil Procedure Code within 30 days of the sale and when the decree-holder has been informed of these facts within the said period of 30 days, there would then be no legal impediment to the decree-holder drawing the deposit amount from Court and in such a case, a Court construing Section 307-A would be justified in holding that the deposit amount should be treated as an amount which may have been received by the decree-holder.— **13 T. L. J.**, *438*.

Ref.—18 T. L. J., 1162.

**30.** Where the Appellate Court sets aside the original decree and passes a new decree in lieu thereof, an auction-purchase made by the decree-holder in execution of the original decree, which has been set aside, cannot stand.— **15 T. L. J.**, *272*.

**31.** The whole decree-debt should be deposited in Court before an execution sale is sought to be set aside under Section 307-A. The sale of one of the items is not liable to be set aside on payment into Court of the price for which it was sold and five per centum of such amount.—**16 T. L. J.**, *402*.

**32.** A decree on a hypothecation bond was obtained by the respondent against the defendants in O. S. No. 376 of 1098. This decree was attached by one V. A. in execution of a Small Cause decree in S. C. S. No. 890 of 1097 against respondent. The attaching creditor brought the hypotheca to sale. The decree-holder in 376 of 1098 applied for setting aside the sale on his depositing the decretal amount under the Small Cause decree together with five per cent. commission on the purchase amount and costs incurred in connection with the same. On the question whether such application is competent ;

*Held.*—(1) Such an application is competent. The hypothecatee of the properties sold is 'a person whose immovable property' has been sold within the meaning of Order XXI, Rule 86. The fact that the hypothecation has merged in the decree and that the sale was held in enforcement of his rights cannot affect his rights so long as the hypothecation rights have not been extinguished.

(2) The amount specified in the proclamation required to be deposited under the Rule must be taken to be the amount which has to be realised by the sale of the particular properties.

87. (1) Where any immovable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it :

Application to set aside sale on ground of irregularity or fraud.

Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

---

(3) Where the whole of the amount that could be claimed by the attaching creditor has already been deposited, the balance of the amount being payable to the applicant himself, such deposit must be held to be a sufficient compliance with the requirements of the Rule.— **44 T. L. R.**, *367* ( = **18 T. L. J.**, *1162*).

**33.** A person who, not being himself a party to the decree, protests against the court-sale of property in execution of the decree against the judgment-debtor and gets the sale set aside under Rule 86 of Order XXI, by an application made therefor, free of any protest accompanied by payment of the decretal amount and five per cent. cannot be allowed to claim refund of the amount as having been involuntarily paid.

The provisions of Sub-rule (2) contain in themselves clear indication of the intention of the Legislature that the deposit under the Rule must be unconditional and voluntary, in acquiescence of the liability of the property sold for the decree amount. A person whose property is wrongly sold for a decree against another has other remedies open to him and there is no obligation on him to make any application under Rule 86. But if, with a view to avoid the trouble and inconvenience of a litigation against the purchaser, he elects to make the application under the Rule and deposit the money, he cannot be allowed to go back upon his own act, after securing the benefit of having the sale set aside by reason of the deposit of the money (F. B.).— **19 T. L. J.**, *285*.

**34.** Where a sale is set aside by a deposit made under Section 307-A, the deposit should be deemed an unconditional one, as otherwise the Court has no jurisdiction to set aside the sale.

Having made an unconditional deposit a judgment-debtor is estopped from contending that he paid an excess amount and he is entitled to be recouped in respect of the same. There is no provision in the Civil Procedure Code for the restitution of any amount deposited under Section 307-A.— **19 T. L. J.**, *360*.

**35.** See also—

Sec. 57.—**2 T. L. R.**, *95*.

Or. XXVI, r. 14.—**16 T. L. J.**, *267*.

**Or. XXI, r. 87** [= S. 308 = *Or. XXI, r. 90*]

I. The corresponding Section of Regulation II of 1065 was as follows :—

"308. *Application to set aside sale of land on ground of irregularity.*—The decree-holder, or any person whose immovable property has been sold under this Chapter, may apply to the Court to set aside the sale on the ground of a material irregularity in publishing or conducting it ;

but no sale shall be set aside on the ground of irregularity unless the applicant proves

to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity."

II. "The language now proposed to be employed is different from the language of Section 308 C. P. C., but does not effect any radical change. It is extended by enactment, in lieu of judicial decisions now, to include every person who reaps the advantage, in whole or in part, flowing from the sale of property. It is also made clear that persons having any interest in the property and which interest is prejudicially affected by the sale, may apply under the Section, thus avoiding the doubt entertained as to the meaning of the clause 'whose immovable property has been sold.' "—

*Notes on Clauses.*

III. In the Statement of Objects and Reasons for the 1901 amending Bill, it was stated :—"It is proposed to enact the principle of a series of rulings to the effect that a person entitled to share in a rateable distribution of assets is authorised to apply under this provision. Here again, much discussion has arisen on the precise meaning of the expression "any person whose immovable property has been sold," and it is proposed to make it clear that all persons who would, to the extent of their interests, be entitled to sue for cancellation of the sale and recovery of the property, are included."— *India Gazette dated 21-12-1901, Pt. V.*

IV. In regard to the Proviso, the Indian Special Committee said :—"The Committee have altered the language of the Proviso in order to meet the doubts which have been raised as to the evidence upon which the Court can act. [ Tasadduk Rasul Khan *v.* Ahmad Husain (I. L. R., 21 Cal., 66) ]."

V. In regard to the words "or fraud" which occur in the new Rule in two places, the Indian Select Committee of 1908 observe :—"The words "or fraud" have been added after the word "irregularity." We think that the existing law as contained in Section 311 of the present Code is defective, the omission in the Section to refer to fraud as a ground for setting aside a sale having led some Courts to hold that an order on an application setting up fraud as a ground for relief is, unlike an order made on an application under Section 311, a decree and open to second appeal. This result, which often involves a considerable prolongation of these proceedings, is in our opinion undesirable. We think that applications for the setting aside of sales should, so far as the procedure applicable to them is concerned, stand on the same footing whether they are based on the ground of irregularity or on the ground of fraud."— *India Gazette dated 15-2-1908, Pt. V.*

VI. For Form of Notice to show cause why sale should not be set aside, see Appendix E, Form No. 36.

### Case Law.

**1.** If the judgment-creditor buys the property sold in execution of his own decree, without the permission of the Court, there will be material irregularity in the conduct of the sale.— **17 T. L. R. App.**, *6.*

**2.** In execution of a money decree against X, P the decree-holder attached the eastern half of a purayidom, but for some unaccountable reason, got the whole purayidom including the western half and a chira proclaimed for sale, himself became the purchaser in 1062 and obtained delivery in 1063. Y another creditor of X obtained a decree in 1073 more than 12 years after P's decree and in execution thereof attached the plaint properties. The suit brought by P to set aside the attachment was at first dismissed by the Munsiff on the ground of limitation bar and subsequently, after remand, on the ground that a sale without a prior attachment was void.

*Held.*—A sale without attachment though irregular is not invalid without proof of substantial injury under Section 308, Civil

Procedure Code. The limitation applicable in the case is one year, under Article 8 of the Limitation Schedule (old).

[Omission to attach amounted to no more than a material irregularity which was not sufficient to vitiate the sale unless substantial injury resulted from it. The publication of the attachment is a step leading up to the publication of the sale, the actual proclamation of sale being a notice to the public that the sale is to take place on a particular date. (21 All., 311).

An omission to adopt any one of the various steps to be taken in execution is only a material irregularity and a sale so made is not invalid unless substantial injury to the judgment-debtor is affirmatively shown (21 Cal., 66).

An attachment is a measure resorted to for the protection of the decree-holder and purchaser against intermediate alienations, and after a Court-sale had been confirmed and a sale certificate granted to the purchaser, the sale is not to be considered a nullity merely by reason of the absence of attachment. (18 Cal., 188).

A sale in execution without due notice to the legal representative of the deceased mortgagor is not a nullity, though the irregularity is material. Strangers to a suit are justified in believing that the Court had done that which by the direction of the Code it ought to do. (25 Bom., 387).]

**20 T. L. R.**, *235.*

Dist.—6 T. L. J., 220.
Ref.—33 T. L. R., 197
(=7 T. L. J., 867).

**3.** Where an auction sale is sought to be set aside on the ground of material irregularity, the burden of proving such irregularity lies on the party pleading irregularity. Mere irregularity with no proof of material injury is not sufficient to vitiate sale.

The Court ought to have presumed that the proclamation copies were affixed to the Court-house, Taluk Cutcherry and to the land, instead of throwing the onus of proof on the purchaser. There was no evidence in the case connecting the alleged irregularities with the substantial injury.—

**1 S. D.**, *356.*

**4.** All applications under Section 308 are also applications under Section 238 [new Section 40]; and similarly all applications in execution where fraud is alleged come under Section 238.

A Court sale impeached on the ground of fraud cannot be set aside in the absence of proof that the auction-purchaser was a party to the fraud either primarily or as having purchased with notice of the decree-holder's fraud.— **1 T. L. J.**, *86.*

Fol.—10 T. L. J., 292.
Ref.—40 T. L. R., 151.
18 T. L. J., 952.

**5.** A material irregularity in the sale proclamation regarding the number of trees in the property is not necessarily a fraud on the judgment-debtor, unless it can be shown that the auction-purchaser or decree-holder was instrumental in making the misrepresentation.

Material irregularity and fraud are not synonymous terms. The question of fraud is a mixed question of law and fact; the facts being found, the inference whether they constitute fraud is a question of law.

Article 152 of the Limitation Regulation (old) will apply to an application for setting aside a Court sale, only if fraud is established. Applications to set aside a Court sale on the ground of material irregularity which falls short of fraud are covered by Section 308, C. P. C., and the period of limitation for such applications is that prescribed by Article 138.— **3 T. L. J.**, *74.*

**6.** A judgment-debtor seeking to set aside an execution sale of immovables on the ground of under-valuation in the sale proclamation is estopped from setting up that plea, if he allows the sale to be completed, having been aware throughout of the alleged irregularity.

The properties probably fetched less than they were actually worth Their valuation might have erred on the side of exaggeration; but the appellant was estopped by his conduct in setting up the plea of understatement in the sale proclamation. He obtained three successive adjournments to pay up the decretal amount. He failed to do so, and not once during this time did he impeach the value stated in the proclamation. On the other hand, it was shown that he consented to have the property sold on the original proclamation, if he defaulted to pay off the decree-debt,—

**31 T. L. R.**, *84.*

Ref.—43 T. L. R., 429
(= 19 T. L. J., 491).

**7.** In execution of a decree on a hypothecation bond executed by one C. V. deceased, obtained against her sons, as her representatives, immovable properties were sold in Court auction. V. P. the daughter of C. V., alleging that she was the exclusive owner of the properties sold, having inherited it on the death of her mother to the exclusion of her brother, and also alleging that the sale was brought about as the result of collusion between the decree-holder and the judgment-debtor, applied to set aside the sale under Section 308, C. P. C., on the ground that there was material irregularity in publishing and conducting the sale. The application was opposed on the ground, *inter alia*, that the applicant could not have recourse to Section 308, C. P. C.

*Held.*—The application was not sustainable as the applicant on her own showing, could successfully maintain a separate suit to protect her rights.— **5 T. L. J.**, *44.*

**8.** The mortgagee of certain properties sold in Court auction applied to set aside the sale on the ground that he had a mortgage right which was not shown in the sale proclamation. The Court ordered that to the extent of the mortgage interest, the sale would not be confirmed. On appeal:

*Held.*—The order of the Court below was wrong. The applicant having obtained the mortgage before the properties were placed under attachment, he was not a person whose immovable properties had been sold and the application was not maintainable.

It is not every person having an interest in the properties sold in Court auction that has the right of applying under Section 308, C. P. C., to set aside the sale. It is only a person whose immovable property has been sold under Chapter XIX of the C. P. C. that has the right of applying under Section 308. One who claims, not through, but adversely to the judgment-debtor, does not come under Section 308. A person claiming by title paramount to the judgment-debtor is not within the meaning of the words "any person" in the Section, inasmuch as his title to the property is not affected by the sale, whether it were regular or irregular, and therefore cannot apply to the Court to set aside the sale.

The mortgagee of the property sold in execution who takes a mortgage prior to the attachment in execution does not come within the meaning of the words "person whose immovable property has been sold under this Chapter."—

**30 T. L. R.**, *248*
**(= 5 T. L. J.**, *55*).

**9.** A decree made the interest of each of the defendants in the hypothecated property liable only for his share of the decree-debt. The Court, however, put up the interests of all the defendants solidly without any discrimination and without any severance, charging thereby the interests of defendants 1 and 2 with a great deal more than what under the terms of the decree they were bound to pay.

*Held.*—The procedure was illegal and obviously led to injustice inasmuch as it prevented defendants 1 and 2 from freeing their interests from liability to sale by payment of their share of the decree-amount. Further, after the sale, they could not get

the sale set aside except by paying up the whole amount due under the decree.—

**9 T. L. J.**, *267*.

**10.** Where a material irregularity is proved to have occurred in the conduct of a Court sale, and it is shown that the price realised is grossly inadequate, it may be inferred that the low price was occasioned by the irregularity.

Misdescription as regards the boundaries, muri and survey number is material irregularity. The auction-price was also much below the real value.

"There must be evidence showing that substantial injury was a necessary result of the irregularity complained of. No doubt there is no direct evidence in the strict sense of the term that the inadequate price was caused by the irregularity, still there is evidence from which the inference necessarily arises that the irregularity was the cause of the injury." (24 Cal., 291).—

**9 T. L. J.**, *308*.

**11.** The decree provided that, for a certain amount, the properties of one of the judgment-debtors should be proceeded against, and for another amount another judgment-debtor and certain other properties should be liable. The sale in execution was conducted as if all the properties sold were jointly and severally liable for the whole decree amount.

*Held.*—Such a course is not only a most material irregularity in the conduct of the sale, but vitiates the sale altogether.

The word "conducting" appearing in Section 308 C. P. C. is wide enough to cover a case where a sale has taken place or has been conducted in opposition to the terms of the decree.

Even assuming that the petition objecting to the sale should have been filed under Section 238 [new Section 40], there is authority that an application made under Section 308 may be treated as one under Section 238.— **10 T. L. J.**, *292*.

**12.** An application by the judgment-debtor to set aside the execution sale on the ground of the fraud of the decree-holder, auction-purchaser, comes within the scope of Section 238 C. P. C. [new Section 40].—

**38 T. L. R.**, *82*

(=**11 T. L. J.**, *438*).

Ref.—18 T. L. J., 952.

[Note the introduction of the words "or fraud" in the new Rule.]

**13.** Certain properties were proclaimed for sale in pursuance of a decree. The judgment-debtor applied for two months' time to pay up the decree amount and consented to have the properties sold without a fresh proclamation in the event of his not making the payment within that period. The application was granted and the sale was adjourned accordingly. On the adjourned date the judgment-debtor applied for further time. This application was refused, and the sale was held on the original application. The judgment-debtor thereupon applied to have the sale set aside on the ground of irregularities in the proclamation of sale. In neither of his petitions was any reference made to either misdescription of the property or under-statement of its value in the proclamation.

*Held.*—The sale could not be set aside. Granting that the alleged irregularities existed, the judgment-debtor, who should be presumed to have known them, ought to have taken objection to the sale on that ground before it was held. Not having done so, he should be held to have waived his objections.

"It would be very difficult indeed to conduct proceedings in execution of decrees by attachment and sale of property if the judgment-debtor could lie by and afterwards take advantage of any misdescription of the property attached and about to be sold, which he knew well, but of which the execution-creditor or decree-holder might be perfectly ignorant—that they should take no notice of that, allow

the sale to proceed, and then come forward and say the whole proceedings were vitiated." Such belated objections cannot be allowed. (12 Mad. 19).— **13 T. L. J.**, *126*.

Dist.—18 T. L. J., 963.
19 T. L. J., 292.
Ref.—43 T. L. R., 429
( = 19 T. L. J., 491).

**14.** *Per Sesha Aiyar, J.*—In a case where a party, instead of applying under Section 238 of the C. P. C., [new Section 40], wrongly brought a suit, the plaint can be treated as an application under Section 238, when no question of limitation arises.

Understatement of value in a sale proclamation may afford a good ground for an application under Section 308.

Such irregularity, though it may not always amount to fraud, may do so on the facts and circumstances of a particular case.

Fraud must be reserved for that which is dishonest or morally wrong.

If the conduct of the decree-holder in connection with the sale can hardly be consistent with good faith and if the obvious effect of his act would be to mislead possible bidders and prevent them from offering a reasonable price, the under-statement of value amounts to fraud.

"Fraud, in the contemplation of a Civil Court of Justice, may be said to include properly all acts, omissions and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue or unconscientious advantage is taken of another."

*Per Pulpu Pillai, J.*—Where the plaint not only prayed for setting aside the auction-sale but also asked for other reliefs against defendants other than the auction-purchaser and the nature of the reliefs is undoubtedly such that they can be claimed only in a regular suit, it cannot be converted into an application under Section 238 C. P. C.

An under-statement of value by itself is not sufficient to justify an inference of fraud. If that were the law, few execution sales would be secure.

Erroneous statements in proclamation schedules are not incompatible with good faith on the part of the decree-holder and do not *per se* suggest or lead to the inference that he had committed a deliberate wrong to injure anybody.

Any person who is anxious or cares to bid at a Court-sale generally makes himself acquainted with the particulars, value and nature of the property before he does so and is not in the least influenced by the statements in proclamation schedules.

*Per Chief Justice.*—A mistake as to price in the proclamation of sale of the value of the properties brought to sale, is an irregularity and may amount to material irregularity in many cases ; but it does not necessarily follow that an auction-sale had, in pursuance of that proclamation, is vitiated by fraud.

To amount to fraud, there must be evidence to show that the under-statement of value prevented or scared away intending bidders.— **13 T. L. J.**, *469*.

**15.** A misstatement of the approximate value of the properties to be sold in a sale proclamation is, no doubt, a material irregularity. But in order that that may be a ground for annulling the sale, it should be shown that an inadequate price was obtained by the under-valuation. Where the amount realised by the sale is adequate though the valuation is inadequate, there can be no substantial injury, and the sale cannot be set aside. It was not shown, in the case, that the price was inadequate.

The judgment-debtor will be estopped from raising the contention, as he has allowed the sale to be completed having been throughout aware of the irregularity.

It is doubtful whether a want of strict observance of the hour prescribed by Civil

Circular No. 4 of 1088 for holding auction-sales would amount to a material irregularity.— **39 T. L. R.**, *211* (=**14 T. L. J.**, *207*).

Ref.—43 T. L. R., 429 (= 19 T. L. J., 491).

**16.** The right conferred under Order XXI, Rule 87, is exercisable by a person whose interests are prejudicially affected by the sale, even though such interests do not relate to the property covered by the sale.

The creation of a right to apply for the cancellation of a sale under the Rule in favour of persons whose interests are affected by the sale does not by itself make out that such interests should relate to the subject-matter of the sale. There is no warrant to make the same inapplicable to cases where the interests, though not relating to the property, have been vitally affected by the sale.

The first two classes of cases provided for in Rule 87 have reference to those who are entitled to enforce their rights against the judgment-debtors in the suit, while the third category of persons enumerated in the Rule covers those who, though not entitled to the enforcement of such rights, are prejudicially affected by the sale. The prejudice need not necessarily be by reason of any right in relation to the property.— **44 T. L. R.**, *299* (= **18 T. L. J.**, *709*).

**17.** The owner of some of the properties hypothecated is not competent under Section 308 to object to the sale of property which is not his. The expression "person whose immovable property has been sold" occurring in the Section does not include such a person.— **18 T. L. J.**, *891*.

**18.** Section 308 does not apply to cases where fraud is set up, although under Rule 87 of Or. XXI, cases of fraud in the publication and conduct of the sale have been brought within the ambit of this provision. Under the old Code, cases where fraud has been alleged would have to be dealt with under Section 238 [new Section 40]. Even under the new Code, applications for the cancellation of the sale on the ground of fraud in matters other than the publication and conduct of the sale have to be dealt with under Section 40.

The period of limitation allowable in applications where fraud is alleged is three years under Article 152 of the Limitation Regulation [=Article 165 new]. The wording of Article 138 of the Limitation Regulation (old) was different from the corresponding Article in the British Indian Act in that in the latter provision the expression "irregularity in publishing or conducting the sale" did not find a place. When the period of limitation prescribed under Article 138 of the Limitation Regulation (old) had already expired and no reasons are shown for the delay, interference could be had only if the plea of fraud is made out.

Though inadequacy of the price and undervaluation in the proclamation cannot by themselves constitute fraud, the same taken along with the omission to have a proper notice of proclamation served on the defendant and to have the sale duly proclaimed and conducted on the property, would clearly constitute fraud.

Under the Civil Procedure Code of 1065, the party has a right to challenge the correctness of a remand order passed under Section 533 thereof [=Or. XL, r. 22] in the appeal filed against the fresh decree, even though he had not exercised the right to appeal against such order of remand provided under Section 557, Clause (28) of the Code [=Section 82, Or. XLII, r. 1]. This right has been specifically negatived by Section 83, Clause (2) of the Code of 1100; but the refusal of this right has been expressly made applicable only in cases of remand orders passed after the Code of 1100 came into force.— **18 T. L. J.**, *952*.

**19.** To constitute a waiver of the right to attack the sale on the ground of a defective

88. The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale, on the ground that the judgment-debtor had no saleable interest in the property sold.

Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest.

proclamation, two conditions have to be satisfied. The offer to submit to a sale without a fresh proclamation should have been made with a knowledge of the defect in the proclamation and the offer must have been accepted *in toto*.

Where the judgment-debtor asks for six months' time to pay up the decree amount and agrees in that event to the sale being held without a fresh proclamation, the second condition above mentioned is not satisfied when only six weeks' time is granted.— **18 T. L. J.**, *963*.

**20.** The defendant applied to have the sale of his properties in execution set aside on the ground of material irregularity. The question for decision was whether the matter was *res judicata* by a previous order of the executing Court rejecting a petition presented by the defendant on the date of the sale objecting to the sale on the very same grounds as were urged in his present application.

*Held*.—The matter was not *res judicata* by the previous order. It was impossible to read into that order, which consisted of the one word "rejected", a judicial adjudication finally determining any matter in dispute between the parties. It had to be treated merely as an interlocutory order. It was passed without any enquiry. The Court evidently did not want to stop the sale on account of the belated application of the judgment-debtor and was inclined to leave the parties take their chances on the sale. The right of the judgment-debtor to pursue his remedies under Section 308 was not affected by that order.— **19 T. L. J.**, *411*.

**21.** See also—

Sec. 41.— **33 T. L. R.**, *197* (= **7 T. L. J.**, *367*).
" 59.— **14 T. L. R. App.**, *37*. **28 T. L. R.**, *143* (= **3 T. L. J.**, *110*).
Or. XXI, r. 44.—**20 T. L. R.**, *165*.
" r. 64.—**9 T. L. J.**, *271*. **43 T. L. R.**, *429* (= **19 T. L. J.**, *491*).
" rr. 52 & 65.— **13 T. L. R. App.** *9*.
" r. 65.—**K. P.**, *260*. **21 T. L. R.**, *157*.
" r. 67.—**K. P.**, *563*.
" r. 86.—**29 T. L. R.**, *14* (= **3 T. L. J.**, *223*). **38 T. L. R.**, *241* (=**12 T. L. J.**, *162*).
" r. 89.—**7 T. L. R.**, *167*. **2 S. D.**, *269*. **6 T. L. J.**, *220*. **35 T. L. R.**, *75*.
" r. 90.— **14 T. L. R. App.**, *38*.
Or. XL, r. 19.—**19 T. L. J.**, *392*.

**Or. XXI, r. 88** [=S. 310=*Or. XXI, r. 91*]

I. "This Rule introduces no change in the wording as it is in Section 310 C. P. C. But, owing to its finding a place before Rule 89, it has been held in British India that a fresh suit for the same relief is altogether barred. The language used does not support the decisions referred to; and there has been no decision of the Supreme Court which has a binding effect on all British India. Having regard to the history of legislation in regard to this matter, there is no reason to believe that the British

Sale when to become absolute or be set aside.

89. (1) Where no application is made under Rule 86, Rule 87 or Rule 88, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute.

(2) Where such application is made and allowed, and where, in the case of an application under Rule 86 the deposit required by that Rule is made within thirty days from the date of sale, the Court shall make an order setting aside the sale :

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(3) No suit to set aside an order made under this Rule shall be brought by any person against whom such order is made.

---

Indian Legislature intended to take away the right to institute a separate suit. If, however, there is any apprehension that Courts in Travancore are likely to take the same view as Courts in British India, a Proviso may be added retaining the right of suit."— *Notes on Clauses.*

II. **1.** The corresponding Section of the old Regulation was as follows :—

"310. *Application to set aside sale on ground of judgment-debtor having no saleable interest.*—The purchaser at any such sale may apply to the Court to set aside the sale, on the ground that the person whose property purported to be sold had no saleable interest therein, and the Court may make such order as it thinks fit : Provided that no order to set aside a sale shall be made, unless the judgment-debtor and the decree-holder have had opportunity of being heard against such order."

**2.** The Proviso will be found embodied in the next Rule 89.

III. For Form of Notice to show cause why sale should not be set aside, see Appendix E, Form No. 87.

**Case Law.**

**1.** The summary enquiry under Sections 310 and 312 [=Or. XXI, r. 90], C. P. C., is limited to the simple question whether the judgment-debtor had any saleable interest or not. No such restriction exists in an enquiry in a regular suit where all the grounds that justice and equity can suggest, can be urged.— **1 S. D.,** *190.*

**2.** See also—

Or. XXI, r. 86.—**29 T. L. R.,** *14* (=**8 T. L. J.,** *223*). **38 T. L. R.,** *241.* (=**12 T. L. J.,** *162*).

" r. 89.—**7 T. L. R.,** *167.*

---

**Or. XXI, r. 89** [= Ss. 309, 310 Proviso, 311, Para 1=*Or. XXI, r. 92*]

I, Section 309 and the first Para of Section 311 of the old Regulation were as follow :—

**1.** "309. *Effect of objection being disallowed and of its being allowed.*—If no such application as is mentioned in the last preceding Section be made, or if such application be made and the objection be disallowed, the Court shall pass an order confirming the sale as regards the parties to the suit and the purchaser.

If such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale.

No suit to set aside, on the ground of such irregularity, an order passed under this Section shall be brought by the party against whom such order has been made.

2. "*311, Para 1.—Confirmation of sale.*—No sale of immovable property in execution of a decree shall become absolute until it has been confirmed by the Court."

3. For Proviso to Section 310, see last Rule.

II. For the second Para of Section 311, see under Rule 86 *Supra*. The Indian Code of 1882, Section 314, had no second Para. It was an addition made in the Regulation, "the object being to prevent the hardship felt by the judgment-debtors whose property is sold pending an appeal. According to the law now administered the reversal of the decree does not affect the sale. The importance attached to immovable property by the people of this country and the absence of any valid ground for holding a sale good, even after the reversal of the decree in execution of which it was made, are sufficient reasons for the amendment which simply postpones the confirmation of the sale, pending the disposal of the appeal and declares the sale invalid on the reversal of the decree. It, in no way, interferes with the right of the creditor to carry on the execution of the decree in any manner he thinks proper."—
*S. O & R, Para 49.*

III. The words in Section 309—"as regards the parties to the suit and the purchaser" have been omitted, following the Indian Code "probably because they were thought to be unnecessary. If so, the meaning of the Section would be that the order of confirmation operates against all those whose interests are bound by the sale; and such persons are therefore barred by Section 309 from instituting a separate suit to set aside the sale on the ground of irregularity."— 6 T. L. J., *220.*

IV. For Forms of Notice to show cause why sale should not be set aside, see Appendix E, Forms Nos. 36 and 37.

**Case Law.**

1. Under the povisions of Section 241 (Regulation II of 1037), the Courts should pass an order confirming the sale.

When the Court thinks there are sufficient grounds for granting an application for a review, notice of such application should be given under Section 362 (Regulation II of 1037) to the opposite party. If the Court decides to grant the review, an order granting the application with the reasons for granting the same should be recorded.

[Section 241 referred to says that the sale, if not objected to for irregularity or if the objection is disallowed, shall become absolute. It also provides that the order made to set aside the sale shall be final, if the objection be allowed. If the objection be disallowed, the order confirming the sale shall be open to appeal. Section 362 says that the order of the Court for granting or refusing review is final.]— 1 T. L. R., *49.*

2. A mortgaged certain property consisting of four items to B. B sued and obtained a decree for money against A and the property. C (plaintiff) purchased the same. A then applied under Section 240 of the Civil Procedure Code (old) to have the sale of the two items of the property set aside, on the ground that they did not belong to him. The original Court dismissed the application as one not falling under Section 240 of the Code, but the Zillah Judge, in appeal, allowed it. D (defendant) who held a decree against A, thereon attached the two items of property, brought them to sale and purchased them himself. C consequently, sued to have a declaration that the second sale was invalid as against him. The lower Courts upheld the plea of the defence based on the cancellation of the first sale to the extent of the two items forming the property in dispute.

*Held.*—As no material irregularity in publishing or conducting the first sale was asserted or proved, as required by Section 240 the Court had no jurisdiction to entertain and hear the application made by A to have the sale set aside. The District Judge's order should be treated as one of no legal force, as a mere nullity.

The ground on which the application was based was that the property (in suit) sold in execution of the decree was the property of a third party. The decree specifically directed the sale of this property for the satisfaction of the debt. Under the circumstances, the judgment-debtor had no right to make the application. He could not ask the Court to go behind the decree and adjudicate upon the propriety of having passed such a decree. The debtor had, therefore, no *locus standi* to make the application.— **7 T. L. R.**, *167.*

[Section 240 of Regulation II of 1037 deals with confirmation of sale.]

3. Certain immovable property belonging to the plaintiff was sold in execution of an *ex parte* decree obtained against him. It was alleged that he had no notice of the suit, nor of the attachment and sale, and that the *ex parte* decree and execution proceedings were fraudulent. He sued to recover the property so sold.

*Held.*—The Civil Procedure Code contains special provisions for cancellation of sales on the ground of material irregularity and consequent damage, on the application of the party interested; provides for appeals against the orders passed; and prohibits the institution of regular suits by parties to the proceedings, to contest the sales. The plaintiff, in the case, did not adopt the procedure laid down. He was not entitled to contest the sale in the suit on the ground on which he could have obtained relief from the executing Court.— **10 T. L. R.**, *4.*

Dist.—17 T. L. R., 143.

4. The Court has no option under Section 309 except to confirm a Court sale, if no application has been made to set it aside.

A review of a confirmation order can be entertained only on the ground that the confirmation took place before the expiry of the time fixed for an application to set aside the sale in ignorance of an order setting it aside or pending an application to set it aside or other like grounds and not on the ground that it is invalid for irregularity. The holding of a sale on a wrong date is a mere irregularity and will not make the sale a nullity.— **2 S. D.**, *269.*

5. Suit by a junior member of a Marumakkathayam Tarwad to set aside a court sale of Tarwad property in execution of a decree obtained against the Tarwad on the ground among others of irregularity in the conduct of the sale. The Court of first instance dismissed the suit while the Court of first appeal decreed the suit. In second appeal, it was contended for the appellant (the contesting defendant in the Court below) that no separate suit lay, as plaintiff could have applied under Section 308 C. P. C. [= Or. XXI r. 87] to set aside the sale on the ground of irregularity.

*Held.*—(1) No separate suit lay.

Plaintiff being one whose interests were bound by the sale, the decree having been validly obtained against the Tarwad of which the plaintiff was a member, he was barred under Section 309 C. P. C., from instituting a separate suit to set aside the sale on the ground of irregularity.

Assuming that a separate suit was maintainable, it was not established that, by reason of the irregularity (assuming that under-valuation in the proclamation was an irregularity in publishing the sale), substantial loss resulted to the plaintiff. There was no evidence that the property was undersold. The purchaser pays only for the title he gets at the sale. What the Commissioner has valued was not the title but the property. Secondly, assuming that the

property was undersold, this result could not, in the circumstances, be reasonably connected as effect and cause with the undervaluation in the proclamation. An irregularity which was so trivial as to have escaped the notice of the plaintiff until the time of argument in the Court of Appeal, could not be regarded as the one which prevented the bidders from going beyond the price for which the property was ultimately knocked down to first defendant.

(2) The order of confirmation under Section 309 C. P. C. operates against all those whose interests are bound by the sale.

(3) The junior members of a Marumakkathayam Tarwad though not actually parties on record in a suit against the Karanavan are nevertheless 'parties to the suit' within the meaning of Section 309 C. P. C.
**6 T. L. J.,** ***230.***

Ref.—39 T. L. R., 165
(= 12 T. L. J., 403).
40 T. L. R., 151.

**6.** An application presented under Section 308 C. P. C., [ = Or. XXI, r. 87 ] was dismissed for default by the lower Court. In appeal against the order of dismissal, it was contended for the respondents, auction-purchasers, that no appeal lay against the order in question as it was really one passed under Section 97 [ = Or. IX, r. 8 ], and not under Section 309 C. P. C. and as Section 557, Cl. (16), [ = new Section 82 & Or. XLII, r. 1 ], which permitted appeals under Section 309 did not apply where the lower Court dismissed for default an application under Section 308.

*Held.*—An order dismissing a petition presented under Section 308, would fall under Section 309, of the C. P. C., even though the order was not passed on the merits and the order of the lower Court was therefore appealable.— **35 T. L. R.** ***75.***

Fol.—19 T. L. J., 368.
Ref.—19 T. L. J., 920.

**7.** "The purchaser takes the property subject to the burden attached to it. If the encumbrances turn out to be invalid, the vendor has nothing to complain of; he has got what he bargained for; his indemnity is complete. He cannot pick up the burden of which the land is relieved and seize it as his own property. The notion that, after the completion of the purchase, the purchaser is in some way a trustee for the vendor of the amount by which the existence of encumbrances or supposed encumbrances has led to a diminution of the price, and liable therefore to account to the vendor for anything that remains of that amount after the encumbrances are satisfied or disposed of, is without foundation. After the purchase is completed, the vendor has no claim to participate in any benefit which the purchaser may derive from his purchase (F. B.).— **39 T. L. R.,** ***165***
**(= 12 T. L. J.,** ***403*)**.

**8.** When a sale of immovable property is set aside under Section 309, the purchaser shall be entitled to receive back his purchase-money (with or without interest as the Court may direct) from the person to whom it has been paid, as per provision of Section 312 [ = Or. XXI, r. 90 ]. The fact that the sale was set aside by an Appellate Court cannot make any material difference, as the appeal is only a continuation of the proceedings of the execution Court.

The same principle should be applied in awarding interest under this Section, as in awarding interest in a decree, as the repayment may be enforced in the same manner as is provided for the execution of decrees. The normal rate of interest after date of suit in decrees for money is six per cent.— **17 T. L. J.,** ***853.***

**9.** A sale becomes absolute on confirmation of it under Rule 89 of Order XXI, and an application for delivery of possession made more than three years after that date is barred under Article 164 of the Limitation Regulation. The granting of a sale

90. Where a sale of immovable property is set aside under Rule 89, the purchaser shall be entitled to an order for repayment of his purchase-money, with or without interest as the Court may direct, against any person to whom it has been paid.

Return of purchase-money in certain cases.

---

certificate is not essential for the confirmation of the sale, and therefore, it cannot be contended that limitation for an application for delivery of possession begins to run only from the date of the grant of the sale certificate.— **18 T. L. J.,** *1342.*

**10.** See also—

Sec. 56.—**13 T. L. R.,** *50.*
,, 57.—**2 T. L. R.,** *95.*
**12 T. L. R.,** *111.*
**12 T. L. R.,** *192.*
**26 T. L. R.,** *131*
(=**1 T. L. J.,** *196*).
,, 79.—**19 T. L. J.,** *406.*
Or. XXI, r. 90.—**14 T. L. R. App.,** *38.*

---

**Or. XXI, r. 90** [=S. 312= *Or. XXI, r. 93*]

The corresponding Section of the old Regulation was as follows:—

"312. *If sale set aside, price to be returned to purchaser.*—When a sale of immovable property is set aside under Section 307-A, 309, 310 or 311,

or when it is found that the judgment-debtor had no saleable interest in the property which purported to be sold and the purchaser is for that reason deprived of it,

the purchaser shall be entitled to receive back his purchase-money (with or without interest as the Court may direct) from any person to whom the purchase-money has been paid.

The re-payment of the said purchase-money and of the interest (if any) allowed by the Court may be enforced against such person under the Rules provided by this Code for the execution of a decree for money."

[For Sections 307-A, 309, 310 and 311, see Order XXI, Rules 86, 89 and 88].

**Case Law.**

**1.** An auction-purchaser is entitled to a re-imbursement of his purchase-money when the sale is set aside on the ground of irregularity either by a separate suit or an application made under Section 308, C. P. C. [= Or. XXI, r. 87]. The parties would, by the decree for cancellation, simply be placed in *statu quo.*—**14 T. L. R. App.,** *38.*

Dist.—6 T. L. J., 220.

**2.** The plaintiff, the Court auction-purchaser of judgment-debtor's mortgage rights in the plaint property, having been, in his attempt to get possession of the property successfully obstructed by a superior mortgagee and the Court not having removed the obstruction, sued for refund of the purchase-money, but the lower Courts disallowed the plaint.

*Held,*—(1) The plaintiff was entitled to no relief as the plaint did not allege that the judgment-debtor had no saleable interest at all in the property in which case alone a suit would lie by the auction-purchaser for refund of money.

(2) The Zillah Judge was wrong in his observation that plaintiff should have proceeded against the obstructor, the latter not being a necessary party at all to this suit.

(3) The Munsiff was wrong in saying that the judgment-debtor against whom plaintiff claimed no relief was the person properly liable.— **K. P.,** *363.*

**3.** Section 312 lays down that when a sale of immovable property is set aside under Section 307-A, Section 309 (on the ground of material irregularity in publishing and conducting it), Section 310 (on the

91. Where a sale of immovable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute.

Certificate to purchaser.

92. Where the immovable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under Rule 91, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

Delivery of property in occupancy of judgment-debtor.

---

ground of the person whose property purported to be sold having no saleable interest therein) or Section 311 (where the decree in execution of which the auction-sale has taken place is subsequently reversed on appeal), "the purchaser shall be entitled to receive back his purchase-money with or without interest as the Court may direct from any person to whom the purchase-money had been paid."

"Although there is no express provision in the Code laying down that a decree-holder may take out of Court the proceeds of an execution sale before the date on which the sale is confirmed, yet Section 312 implies that this may be done......Still, we do not mean to hold that the Court holding the sale has no discretion in refusing to pay to the decree-holder the purchase-money of the property sold before the date of confirmation of the sale. There may be cases in which it would be necessary for the protection of the interest of the purchaser to detain the purchase-money until the confirmation of sale, and the Court may, under special circumstances, refuse to pay over to the decree-holder the purchase-money until the sale is confirmed; but in such cases the Court should provide for the due payment of the interest of the money so detained" (12 Cal., 252).—
**13 T. L. J.,** *438.*

Ref.—18 T. L. J., 1162.

**4.** See also—
Sec. 57.— **2 T. L. R.,** *95.*
Or. XXI, r. 88.—**1 S. D.,** *190.*
„ r. 89.—**17 T. L. J.,** *853.*

**Or. XXI, r. 91** [=S. 313=*Or. XXI, r. 94*]

I. For the corresponding Section of the old Regulation, see under Section 57 *Supra.*

II. For Form of Certificate of sale of land, see Appendix E, Form No. 38.

**Case Law.**

**1.** A Court has inherent jurisdiction to amend a sale certificate which incorrectly describes the property actually sold. This jurisdiction is not limited to the correction of mistakes made by the Court itself.—
**12 T. L. J.,** *283.*

**2.** Under Section 313, it was the duty of the Court which had confirmed a sale to grant a sale certificate stating the property sold and the name of the person declared to be the purchaser, and an application by

the purchaser was not a condition precedent for the issue of a sale certificate. It follows from this view that there could be no period of limitation for an appplication by the purchaser, as this would merely amount to a reminder to the Court that there was something which the Court should do. In a sense, the application may be regarded as a step in aid of the execution as without a sale certificate, the purchaser could not obtain possession. The decree-holder, therefore, was entitled to apply for the delivery of property sold in court-auction, within three years from the date of application to grant a sale certificate.— **18 T. L. J.**, *632*.

**3.** See cases under Section 57.

**Or. XXI, r. 92** [= S. 315=*Or. XXI, r. 95*]

I. For Form of order for delivery to certified purchaser of land, see Appendix E, Form No. 39.

**II.** Section 315 is an instance of cumulative remedies furnished by the Code of Civil Procedure. A person who purchases immovable properties in Court auction has the right of enforcing his sale certificate and obtaining possession of the properties by means of a petition under Section 315. This summary remedy is a statutory one given to him under the Code. The existence of such a prompt and speedy remedy does not deprive him of the right which he has in law of instituting a suit on the sale certificate for getting possession of the sale property. If the purchaser of immovable properties in Court auction puts in a petition under Section 315 for getting possession of the properties and fails in his attempt to obtain possession, he is not precluded from bringing a suit on the sale certificate (F.B.).— **29 T. L. R.**, *63*.

**Case Law.**

**1.** The right of an auction-purchaser to apply for possession does not accrue till the certificate is granted.— **3 T. L. R.**, *65*.

Fol.—36 T. L. R., 22.

**2.** The heir of the deceased auction-purchaser, decree-holder, applied to be brought on the record as the legal representative of the deceased and to be put in possession of the property purchased. The Munsiff dismissed the application on the ground that the applicant should seek his remedy by a separate suit. On appeal, the District Judge in confirming the Munsiff's order also held that the application was barred as it was presented more than three years after the issue of the sale certificate.

*Held.*—The application fell within Section 238 [new Section 40] and the question was none the less a question under Section 238 because it also fell under Section 315.

Sections 315 and 316, C. P. C., specially provide for the delivery of possession to the auction-purchaser, on his application, of the property purchased by him, after the issue of a sale certificate. The view of the lower Court that the auction-purchaser should seek possession by a regular suit was clearly wrong.— **20 T. L. R.**, *151*.

Fol.—26 T. L. R., 246.
Ref.—27 T. L. R., 138
(= 2 T. L. J., 325).

**3.** Delivery of symbolical possession of property, purchased in execution sale, operates to give the person so put in possession a fresh cause of action. Consequently, a suit by a decree-holder, auction-purchaser, who has obtained through Court symbolical delivery of possession of the property purchased by him, for recovery of possession of the same from a person in actual possession of it under a title derived from the judgment-debtor subsequent to the attachment but before the auction-sale in execution of the decree is not barred under Section 238 [new Section 40] C. P. C., even though he could have obtained actual possession under Section 315, inasmuch as the proceedings in execution ended with the delivery of formal possession, and there was nothing for the execution Court to do in the matter.— **29 T. L. R.**, *166*.

93. Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under Rule 91, the Court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

Delivery of property in occupancy of tenant.

---

4. The right of an auction-purchaser to apply for possession does not arise till the certificate is granted.

Since under Section 315, it is necessary for the decree-holder to provide himself with the sale certificate before he applies for delivery of possession, it cannot but be held that, in applying for the issue of the sale certificate, the plaintiff was taking a step in aid of his application for obtaining possession; and since the application for delivery by a decree-holder-auction-purchaser—is itself to be regarded as an application for execution, the application for the sale certificate must be held to be a step in aid of execution.— **36 T. L. R.,** ***22.***

Ref.—42 T. L. R., 362 (= 16 T. L. J., 380).

---

**Or. XXI, r. 93** [ =S. 316=*Or. XXI, r. 96* ]

I. The words "on the application of the purchaser" are new.

II. 1. The usual way in which the "Jenmom right" of disputed property (which means either a mortgagor's or land-lord's right) is delivered to the judgment-creditor is by symbolical and not actual delivery under Section 316, C. P. C.—

**16 T. L. R. App., *8.***

2. Delivery under Section 316 could properly be made only in the case of their being tenants or other persons entitled to occupy the land in occupation (10 Mad., 53).

**29 T. L. R., *166.***

3. As between the judgment-creditor or his assigns on the one side and the judgment-debtor or his heirs on the other, symbolical possession is as good as actual possession to give the (judgment-creditor's) purchaser or his assigns the right to bring a suit for possession within twelve years from the date of such symbolical possession.

"Symbolical delivery of possession was good against the defendant and if he still continued in actual possession, he might be turned out by separate suit within twelve years from dispossession. As against third persons, formal possession was of course of no avail" (25 Bom., 275).—

**26 T. L. R., *239.***

4. Delivery of symbolical possession even though erroneously made, *i. e.,* made under circumstances which do not make Section 316 applicable, operates to give the person so put in possession a fresh cause of action and to place the judgment-debtor in the position of a trespasser. Consequently a suit by the assignee-decree-holder purchaser for actual possession of the properties purchased is not barred under Section 238 [new Section 40], and symbolical possession delivered in circumstances to which Section 316 is not applicable, is not a nullity (17 M. L. J., 599).—

**29 T. L. R., *166.***

**Case Law.**

1. A hypothecator, who does not transfer possession to the hypothecatee is not precluded by the hypothecation from leasing out the property hypothecated, and a purchase by the hypothecatee in execution

*Resistance to delivery of possession to decree-holder or purchaser.*

Resistance or obstruction to possession of immovable property.

94. (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

---

of a decree obtained by him for enforcing his charge, cannot have the effect of determining the lease even though the lessee has been impleaded in the suit as the person in possession. The purchaser has acquired the property only subject to such possessory rights as had been created by the hypothecator before the date of suit and the occupation which such purchaser can get is only formal possession under Section 316 of the C. P. C.— **13 T. L. J.**, *346*.

**2.** Criminal Courts should not lightly brush aside the records relating to delivery of possession in execution of decrees of Civil Courts. The omission to give due weight to such records will have the effect of unnecessarily driving aggrieved parties to Court even with respect to matters which had been once settled by the Civil Courts.— **18 T. L. J.**, *1287*.

**3.** The symbolical delivery contemplated by the Civil Procedure Code has reference to a case of a person other than the purchaser in possession and not to those where the purchaser himself is in occupation of the property. Hence, a formal symbolical delivery of possession through Court cannot be considered to be imperative in such cases.— **19 T. L. J.**, *998*.

**Or. XXI, r. 94** [ =S. 317, 323 & 324
= *Or. XXI, r. 97*]

I. The corresponding Sections 317 and 323 of Regulation II of 1065 were as follow :—

"317. *Procedure in case of obstruction to execution of decree.*—If, in the execution of a decree for the possession of property, the officer charged with the execution of the warrant is resisted or obstructed by any person, the decree-holder may complain to the Court at any time within one month from the time of such resistance or obstruction.

The Court shall fix a day for investigating the complaint, and shall summon the party against whom the complaint is made to answer the same."

"323. *Resisting or obstructing purchaser in obtaining possession of immovable property.*—If the purchaser of any immovable property sold in execution of a decree be resisted or obstructed by the judgment-debtor or any one on his behalf in obtaining possession of the property, the provisions of this Chapter relating to resistance or obstruction to a decree-holder in obtaining possession of the property adjudged to him shall be applicable."

II. For Section 324, see Rule 98 *Infra.*

III. For Form of summons to appear and answer charge of obstructing execution of decree, see Appendix E, Form No. 40.

**Case Law.**

**1.** In a suit based on lease, parties in possession other than those whom the plaintiff has brought as defendants, should not be brought in as additional parties and the

question of title should, as a rule, not be gone into as against such new parties. The introduction of new parties not only changes the nature of the litigation, but also affects the pecuniary jurisdiction of Courts, especially in a case like this where the value of title exceeds the Munsiff's jurisdiction.

If after a decree on the lease alone, plaintiff finds that the property is not in defendant's hands, his remedy is by following the procedure laid down in Sections 317, 320 and 321 [=Rules 94, 96, 97 and 98].—

**14 T. L. R.,** ***14.***

Dist.—25 T. L. R., 255.
Ref.—18 T. L. J., 671.

**2.** A sale was confirmed under Section 309, C. P. C., [=Or. XXI, r. 89] after disallowing the objections raised under Section 308 [=Or. XXI, r. 87]. Three months after this, the judgment-debtor put in a petition under Sections 323 and 324 that the property could not be sold as it was Kandukrishy property. This petition was dismissed and the judgment-debtor appealed against the order of dismissal.

*Held.*—No appeal lay against such an or- [illegible]

The petition put in under Sections 323 & 324 [=Or. XXI, rr.97 and 98] of the Code could not be construed as one relating to a question arising out of execution as contemplated by Section 238 [new Section 40].

When the decree was satisfied and the execution proceedings closed, the High Court was not at liberty under Section 568 of the Code [new Section 89] to enter into a question of evidence as to whether the property sold fell within the purview of Section 7-A [new Section 8].

*Per Chief Justice.*—If the lands sold are really Crown lands, the proceedings taken will not bind the Crown, though as between the parties to the decree, the decree must be enforced.— **13 T. L. R.,** ***157.***

Ref.—23 T. L. R., 61.

**3.** An appeal does not lie against an order under Section 323, Civil Procedure Code, rejecting the application of an auction-purchaser who is not the decree-holder, to remove the obstruction caused by the judgment-debtor to the delivery of possession of the property purchased by him at an auction-sale.

*Per Sadasiva Aiyer, C. J.*—Section 323, C. P. C., says that "the provisions of the Chapter" (Chapter XIX) relating to resistance or obstruction to a decree-holder in obtaining possession shall be applicable." Those provisions are contained in Section 318 [see new Section 60], and that merely says "the Court shall inquire" and pass such orders as it thinks fit. An order under Section 323 is not made appealable by Section 557 [=Section 82 and Or. XLII, r. 1] of the C. P. C. If it is appealable at all, it must be under Section 238 [new Section 40]. But it has never been held that orders in possession proceedings taken by a purchaser who was not the decree-holder fall under Section 238.

The Courts have extended Section 238 to its farthest limit when they said that the application of the court auction-purchaser, *if he was also the decree-holder*, to eject the judgment-debtor or his representative or a purchaser *pendete lite* or after decree from the judgment-debtor, came under Section 238, and it is impossible to stretch it as to include proceedings for possession taken by a Court auction-purchaser who is not the decree-holder and who has his remedy by suit for possession, the question whether possession should or should not be given to the purchaser who is not the decree-holder having no conceivable effect on the "execution, satisfaction or discharge of the decree."

If the purchaser is a representative in interest of the judgment debtor, the question of possession has arisen in the case between the judgment-debtor's representative and the judgment-debtor, and such a question is clearly not within Section 238, but ought to be tried in a separate suit, if the

95. Where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation to be detained in the civil prison for a term which may extend to thirty days.

Resistance or obstruction by judgment-debtor.

---

representative is unsuccessful in getting possession by an application under Chapter XIX.

*Per Govinda Pillai, J*—The right of appeal claimed is expressly taken away by the last Clause of Section 324 of the Civil Procedure Code, which says that, subject to the result of a suit which the defeated party may bring to set aside the possession order, that order shall be final.—
**25 T. L. R.**, *248*.

Ref.—37 T. L. R., 52
(=10 T. L. J., 459).
19 T. L. J., 649.

**4.** The holders of a decree for surrender of certain properties applied for execution of the decree and got an order for delivery of possession. The Amin deputed to execute the warrant reported on 4-10-1090 stating that there was resistance to the delivery. Thereupon, the decree-holders applied to the Court to have the obstruction removed on 5-10-1090, but the application was dismissed on the ground that the Section of the Code under which it was purported to be made was not stated therein. Subsequently, another application for execution was made on which delivery of possession was again ordered. The Amin reporting obstruction a second time on 11-12-1090, the decree-holders repeated their application to remove it on 12-12-1090.

It was contended that this second application for removal of the obstruction was barred inasmuch as there was a prior obstruction by the same party more than a month before it.

*Held* (Overruling the contention).—The question was whether the decree-holder's right to complain of the last obstruction was in any way affected by the circumstance that there was a previous obstruction by the same party more than a month before the date of the present complaint? There is no provision of law which barred such right. Section 317 of the Civil Procedure Code gave one month's time within which to make the complaint, and the starting point was fixed as the date of "such obstruction," which evidently [illegible] "the obstruction which formed the [illegible]matter of the complaint." [illegible]7 [illegible]. L. J., [illegible]

Rel.—19 T. L. J., 640.

5. See also,—

Sec. 60.— **17 T. L. R. App**. [illegible]5.
Or. XXI, r. 96.—**3 T. L. R.**, 5[illegible]

---

**Or. XXI, r. 95** [=Ss. 318, 319 [illegible] 323
= *Or. XXI*, [illegible] *98* ]

I. For the corresponding Sections of Regulation II of 1095, see under Section 60 and previous Rule.

II. For Form of warrant of committal, see Appendix E, Form No. 41.

**Case Law.**

See under Section 60.

Resistance or obstruction by *bona fide* claimant.

96. Where the Court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment-debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the Court shall make an order dismissing the application.

---

**Or. XXI, r. 96** [= Ss. 320 & 324 = *Or. XXI, r. 99*]

I. Section 320 of Regulation II of 1065 was as follows :—

" 320. *Procedure in case of obstruction by claimant in good faith, other than judgment-debtor.*—If the resistance or obstruction has been occasioned by any person other than the judgment-debtor claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the claim shall be numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant ;

and the Court shall, without prejudice to any proceedings to which the claimant may be liable under the Penal Code or any other law for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of Chapter V;

and shall pass such order as it thinks fit for executing or staying execution of the decree.

Every such order shall have the same force as a decree, and shall be subject to the same conditions as to appeal or otherwise."

[Chapter V, referred to, relates to the Institution of Suits.]

II. For Section 324, see under Rule 98 *Infra.*

**Case Law.**

**1.** The direction of law to treat a claim petition as a plaint is applicable only where decree-holder complains to the Court, and the Court is satisfied that the execution of the decree is obstructed by a claimant other than the judgment-debtor or any one claiming through him. A petition put in by a party resisting execution cannot be treated as his opponent's plaint.— **3 T. L. R.,** ***57.***

**2.** (1) The application contemplated by Sections 320 and 321 (Sections 213 and 214, old Code) when ordered to be registered as a suit by the Court to which it is made, should be registered in the Court which has jurisdiction to try the suit.

(2) The fact that an application under either of these Sections has to go to a superior Court on account of the value of the property embraced by it being higher than the pecuniary jurisdiction of the Court to which the application was made, does not make any difference in the liability to pay court-fees.

The words "the Court" used in these Sections clearly mean the Court the execution of whose warrant of delivery is resisted, or by the execution of whose warrant a third party is dispossessed.— **7 T. L. R.,** ***129.***

**3.** In execution of a decree, the Court commissioner proceeded to value the improvements effected on the plaint property. Plaintiff who was no party to the previous suit, thereupon, presented a petition under Section 213 of the C. P. C., (old) requiring the property to be excluded from execution and his possession to be confirmed, as it was not liable to attachment under the decree which was being executed.

The Munsiff thereon passed on order directing plaintiff's claim to be filed as a regular suit.

*Held.*—The Munsiff was wrong in filing the suit as a claim preferred under Section 213 of the C. P. C., as the provision of that Section is to the effect that where the obstruction, (to execution of decree) is by a *bonafide* claimant not ousted from possession, the claim—*i. e.*, the complaint of obstruction to the execution of the Court process—should be numbered and registered as a suit ***between the decree-holder as plaintiff and the claimant as defendant***; and if the Court was satisfied that the obstruction by plaintiff was *bona fide*, it should have allowed the decree-holder to proceed in the summary manner prescribed by the above Section.— **8 T. L. R.**, *39.*

**4.** The general principles of law are that no man should be deprived of the property in his possession without the authority of a decree of competent Court duly obtained ***against him***; and those who seek to disturb present possession must prove their title to do so.

In cases where the holder of a decree dispossesses those who are not parties to his decree but are in possession of the property concerned, the latter are entitled to restoration of the property on proving their possession unless the decree-holder proves as against them, a better title. A person so dispossessed and suing for restoration of the property cannot claim mesne profits, as such a claim is beyond the scope of the provisions of Sections 213 and 214 (Regulation II of 1037), the mesne profits to be recovered by a regular suit.— **9 T. L. R.**, *46.*

**5.** A and B (the appellants) appealed against the District Judge's order disallowing, without trial, the objections raised by them to the delivery of property to C and D (the decree-holders) in execution of decree, and claimed the property under court sales held subsequent to the date of the decree.

*Held.*—(1) The objection was one which ought to have been disposed of under Section 320 of the Civil Procedure Code after the claim was numbered and registered as a suit between C and D (the decree-holders) as plaintiffs and A and B (the objectors) as defendants.

(2) The omission of the lower Court to number and register a claim as a suit is tantamount to a rejection of the plaint, and the order of the lower Court was therefore appealable.

The decision come to by the lower Court, without following the procedure laid down by law could not be supported and the case must be remanded to the lower Court for trial and disposal in the manner prescribed in Section 320.— **13 T. L. R.**, *76.*

Dist.—17 T. L. R. App., 55.

Ref.—18 T. L. R., 17.

Ex.— 18 T. L. R., 166.

[See the new Rule.]

**6.** Plaintiffs claiming plaint property as belonging to their family, executed a mortgage of it to first defendant, and suing for redemption, obtained a decree. The defendants 2 to 7 obstructed execution of that decree, and the Court following the directions given under Section 320, numbered the claim of the defendants 2 to 7 as a suit between the decree-holders as plaintiffs and the claimants as defendants and disposed of it on the merits. Plaintiffs then sued under the mortgage deed for balance of consideration unpaid or for recovery of plaint property. In special appeal:

*Held.*—The appeal failed. The plaintiff's case alone has to be looked into. The plaintiff has to make out a case for himself, and Section 320 does not relieve him from the onus of proof. His case is based on the mortgage deed and the decree obtained upon it. The mortgage was found fraudulent and the decree obtained in collusion with first defendant.— **1 S. D.**, *295.*

**7.** Section 320 of the C. P. C., which provides for claims advanced by strangers not parties to the decree during execution

97. (1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property, or where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

Dispossession by decree-holder or purchaser.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

98. Where the Court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment-debtor, it shall direct that the applicant be put into possession of the property.

*Bona fide* claimant to be restored to possession.

---

proceedings is also applicable to such claims urged during restitution proceedings under Section 552 [new Section 108].— **3 S. D.**, *20.*

**8.** When once a claim under Section 320, C. P. C., has been ordered to be registered as a suit, it is not necessary that the decree-holder should file a new plaint. Section 320 says that the Court shall proceed to investigate the claim of the obstructor in the same manner and with the like powers as if a suit for the property had been instituted by the decree-holder against the claimant. The omission on the part of the decree-holder to state the particulars regarding the obstructor's possession and how and when that possession was derived, after the claim was filed, cannot have the effect of disentitling the decree-holder to a trial of the claim set up by the objecting petitioner.— **3 S. D.**, *75.*

**9.** Proceedings in execution is suspended during the pendency of the suit under Section 320, and the application for execution presented after the disposal of the suit under that Section has been held to be one to revive the prior application (24 Bom., 345).— **28 T. L. R.**, *151* (**=3 T. L. J.**, *128*).

**10.** *Prima facie* if it be proved or admitted that a person resisting execution is in possession of the property, the decree-holder should show that such possession is under the judgment-debtor and should not be allowed to rely on the decree in his favour. The circumstances of each case will determine whether the burden thus cast on the decree-holder is light or heavy. **14 T. L. J.**, *26.*

**11.** No appeal lies against an order passed under Section 324 [Or. XXI, r. 96]. The order is conclusive subject to the result of the suit that may be filed for vacating it. The enquiry contemplated by Order XXI, Rule 96, is not an elaborate enquiry but only a summary one.— **17 T. L. J.**, *26.*

**12.** See also—

Sec. 60.—**17 T. L. R. App.**, *55.*
**18 T. L. R.**, *17.*
Or. XXI, r. 94.—**14 T. L. R.**, *14.*
„ r. 98.—**1 S. D.**, *344.*
**3 S. D.**, *276.*
**2 T. L. J.**, *382.*

---

**Or. XXI, r. 97**[=Ss. 321 (Paras 1 to 3), 324 =*Or. XXI, r. 100*]

**Or. XXI, r. 98**[=Ss. 321 (Paras 1 to 3), 324 =*Or. XXI, r. 101*]

The corresponding Sections of the old Regulation were as follow:—

"321. *Procedure in case of person dispossessed of property disputing right of decree-holder to be put into possession.*—If any person other than the judgment-debtor is dispossessed of any property in execution of a decree, and such person disputes the right of the decree-holder to dispossess him of such property under the decree, on the ground that the property was *bona fide* in his possession on his own account or on account of some person other than the judgment-debtor, and that it was not comprised in the decree, or that, if it was comprised in the decree, he was not a party to the suit in which the decree was passed, he may apply to the Court.

If, after examining the applicant, it appears to the Court that there is probable cause for making the application, the Court shall proceed to investigate the matter in dispute; and if it finds that the ground mentioned in the first paragraph of this Section exists, it shall make an order that the applicant recover possession of the property, and, if it does not find as aforesaid, it shall dismiss the application.

In hearing applications under this Section, the Court shall confine itself to the grounds of dispute above specified."

[For the last Paragraph of this Section, see under Rule 100 *Infra*.]

"324. *Obstruction by claimant other than judgment-debtor.*—If the purchaser of any such property is resisted or obstructed by any person other than the judgment-debtor claiming in good faith a right to the present possession thereof, or if, in delivering possession thereof, any such person is dispossessed, the Court, on the complaint of the purchaser or the person so dispossessed, shall inquire into the matter of the resistance, obstruction or dispossession, as the case may be, and pass such order thereon as it thinks fit.

The party against whom such order is passed may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be final."

### Case Law.

1. To entitle a person to the benefit of the summary mode of procedure allowed by Section 214 (Regulation II of 1037), he should have been dispossessed of the property he claims in the course of the execution of the decree.— 3 T. L. R., *40*.

2. Under the last Clause of Section 253 (Regulation II of 1037), an order becomes final unless the party against whom it is passed gets it cancelled by a regular suit instituted within a year from the date thereof.

[Section 253 referred to deals with obstruction by claimants other than defendants].— 6 T. L. R., *117*.

3. When a person in possession of property which has been sold in execution as being the property of another sues to establish his title to such property, the burden of proof lies not upon him but upon the person who claims as purchaser at the auction sale; and on failure of proof of title in the latter or in the judgment-debtor plaintiff is entitled to a declaration of his right to the property as against the defendant.—

4 T. L. R., *39*.
8 T. L. R., *134*.
9 T. L. R., *35*.

4. Standing crop is immovable property: and, where a purchaser in auction of standing crops, removes it during pendency of claim investigation relating thereto, the Court is competent, under Section 324, to direct the purchaser to pay to the successful claimant the value of the crops removed.— 12 T. L. R., *27*.

[See the General Clauses Regulation for definition of immovable property and also the change introduced by the new Rule.]

5. A person dispossessed of his property under a decree to which he was no party

has a right to recover it on the mere proof of his possession; but there is a difference between a claim made under Section 321 and a regular suit. In the former, the Court has simply to ascertain whether the claimant was *bona fide* in possession of his own account or on account of some person other than the judgment-debtor and restore him to possession if he was; while in the latter, although the plaintiff may rest his case on his possession, the defendant is not debarred from proving his title which if he can establish as against the plaintiff's possession, he is entitled to succeed.—

**14 T. L. R., *225*.**

**6.** Where a suit for the cancellation of a claim order under Section 324, was admittedly brought more than one year after the date of the order and it was contended that the five days' delay was due to the wrong entry of the date in the copy of the order by the Court's officer.

*Held*.—The delay excusable under Section 5 of the Limitation Regulation related only to appeals and applications and not to suits, and none of the other exceptions relating to suits was applicable to the case and therefore the suit was barred.—

**16 T. L. R., *51*.**

**7.** While a property was under attachment in execution of 1st defendant's decree of the Alleppey Zillah Court, it was purchased in auction by plaintiff in execution of a decree of the Thiruvalla Munsiff's Court. Subsequently 1st defendant also purchased in auction the same property, and, when he applied for delivery of possession under his sale certificate, plaintiff resisted that application by a petition and, before the disposal of the petition, he filed the present suit for a declaration of his title and of the invalidity of 1st defendant's purchase as also for recovery of possession, should he be deprived of it by 1st defendant. The Munsiff, holding that plaintiff's sale became indefeasible as it was not set aside within one year, allowed the suit; while the District Judge dismissed it on the ground that 1st defendant's possession under the sale could not be disturbed, as plaintiff had not sought to set aside the order dismissing his objections under Section 324, and that order had become final by efflux of time.

*Held*.—(1) The sale by the inferior Court not being *ipso facto* null and void but only voidable and as it has not been sought to be cancelled within one year under Article 8 of the Limitation Regulation, it has become indefeasible by lapse of time.

(2) Since it is open to the person dispossessed to file a suit for relief without resorting to the summary procedure provided for in Section 324, the fact that he put in a petition in answer to the auction purchaser's complaint about obstruction does not prevent him from filing his suit at once.

(3) Where the Court expressed no opinion as to a question of title raised by a claimant under Section 324, a regular suit by the claimant to establish title is not governed by Article 7 of the Limitation Regulation and is not barred if not brought within one year from the date of the order. The contention therefore that the plaintiff's suit is not sustainable as he has not brought a suit to set aside the order under Section 324 and that the defendant's title has become perfected on account of the lapse of more than a year from the date of the order in plaintiff's petition is not tenable.—

**22 T. L. R., *147*.**

Ref.—29 T. L. R., 203.
Diss.—10 T. L. J., 347.

**8.** No appeal lies against orders under Sections 321 and 324 of the Code.—

**1 S. D., *344*.**

**9.** Section 320 of the C. P. C., applies only to proceedings in execution of a decree for the possession of property. Where there is no such decree and a stranger to the decree obstructs to possession being given to the auction-purchaser, Section 324 is the one that applies.

An order under Section 324 is not appealable, the aggrieved party's remedy being by a separate suit.— **3 S. D.**, *276*.

**10.** Revision petitions do not lie against orders passed under Section 321 relating to dispossession in execution of decrees and under Section 324 relating to obstruction or dispossession in enforcement of sale certificates which are declared by the respective Sections to be final. In such cases, the Court will have regard to the intention of the Legislature that promptness and certainty should be in some measure accepted instead of judicial perfection.—

**2 T. L. J.**, *232*.

Ref.—28 T. L. R., 209
(= 3 T. L. J., 169).
9 T. L. J., 237.
Fol.—31 T. L. R., 94.

**11.** An auction-purchaser was obstructed in his obtaining possession of the property he purchased, by one not a party to the suit. The auction-purchaser complained to the Court under Section 324 C. P. C., and the Court passed an order against him on the ground that the obstructor was, and was entitled to be, in possession of the property. The auction-purchaser moved the High Court in revision against this order. It was contended, *inter alia*, for the respondent that, as the order passed under Section 324 was declared to be final, subject to be questioned only by a separate suit no motion for revision was sustainable, and as the lower Court having taken evidence and come to a finding on a question, it had not failed to exercise jurisdiction vested in it by law, that on this ground also, no revision petition lay.

*Held* (Overruling these contentions).—The order was open to revision.

In cases where the law invests the orders of the lower Courts with the attribute of finality, *i. e.*, finality till they are set aside by a regular suit, it behoves the lower Courts to carefully weigh all the facts before them, before passing orders, even though the proceedings may be of a somewhat summary nature and it is also necessary that such orders should strictly satisfy the requirements of the Section which gives them the character of a conditional or temporary finality.

Where, therefore, in an enquiry under Section 324, the lower Court without touching upon or referring to the evidence in the case and without considering the several circumstances of the case as also the question of good faith which is an important matter to be considered under Section 324 came to the conclusion that the petitioner was in occupation of the disputed buildings and garden:

*Held*.—As the order of the lower Court did not satisfy the requirements of Section 324 and as the lower Court failed to exercise in a proper manner the power vested in it by Section 324, the character of finality could not attach to the order which could therefore be interfered with in revision.—

**29 T. L. R.**, *118*
(=**3 T. L. J.**, *439*).

**12.** Section 324 relates to questions of possession and not of title. A suit based on title, brought to set aside an order under Section 324 is governed by Article 121 of the Limitation Regulation, which allows a period of twelve years from the date of the order and not by Section 7 of that Regulation.— **29 T. L. R.**, *203*.

**13.** Plaintiff-respondent obtained a decree for recovery of possession of certain property which belonged to Government but was in the enjoyment of the contesting defendant-appellant and others. After date of decree but before delivery of possession to plaintiff, defendant got a lease of the property from Government. Plaintiff subsequently obtained delivery through Court. Defendant applied, on the strength of his lease, for redelivery in execution, but his application was dismissed by the execution Court. On appeal:

*Held.*—Section 321 was inapplicable as the application was not by a person other than the judgment-debtor. The lease obtained from Government did not give the applicant a different capacity, as a judgment-debtor was none the less a judgment-debtor even though he may have acquired an interest in the property, subject-matter of the suit, subsequent to the date of the decree.

Further, even if Section 321 was held to be applicable, the appeal was incompetent as no appeal lay against orders under that Section.— **30 T. L. R.**, *205* (= **4 T. L. J.**, *329*).

**14.** In a suit for declaration of the plaintiff's right to present possession of the property within the meaning of the last paragraph of Section 324, C. P. C., the Court-fee payable is Rs. 10.

It was contended that, besides the prayer for setting aside the summary order passed against the plaintiff in execution proceedings, the plaint also contained a prayer for a declaration that the property should not be delivered in pursuance of such order. This was not a prayer for an injunction and need not be separately valued. It was only an amplification of the prayer to set aside the summary order, and upon that prayer being granted, the other result necessarily followed. The right of the appellant to sue for the establishment of his right rested on the second praragraph of Section 324 which recognises a suit like the present as the only mode of obtaining review of the order passed under that Section and Article 8, Clause 3, of Schedule II of the Court Fees Regulation relates just to actions of this description.— **36 T. L. R.**, *8* (= **9 T. L. J.**, *316*).

**15.** The appellant had obtained against his Kanom tenant a decree for arrears of Michavarom and other dues and in execution thereof purchased the Kanom holding at Court-sale. On applying to obtain delivery through Court, his application was resisted by the respondent who, in execution of a hypothecation decree obtained by him against the same tenant several years prior to the appellant's suit, had purchased the Kanom holding during the pendency of the appellant's suit and had obtained possession of the holding through Court subsequent to the decree in the appellant's suit. The appellant moved the lower Court for removal of the obstruction. The lower Court holding that the respondent was in possession in his own right and that he was not a party to the suit instituted by the appellant, dismissed the application for removal of obstruction.

The appellant having preferred a revision petition to the High Court against the order, a Division Bench held that the order of the lower Court fell under Section 238, C. P. C., [new Section 40], and directed the conversion of the revision petition into a regular appeal. The appeal, coming on for hearing before another Division Bench, was referred to a Full Bench for disposal in view of the difficulties surrounding the case:

*Held.*—(1) As the obstructor in good faith claimed a right to the present possession of the property not on behalf of the judgment-debtor, the auction-purchaser's application for the removal of the obstruction to the delivery of the property fell under Section 324.

An order passed under that Section being final subject only to the result of a regular suit instituted by the party aggrieved, no appeal lay against such order.

Treating the application as a revision petition, this is not a case in which the High Court should interfere in the exercise of its powers of revision, in view of the fact that it is open to the petitioner to seek his redress by means of a regular suit.

(2) Though the obstruction may be said to be one relating to the execution, discharge or satisfaction of a decree, the obstructor cannot be regarded as the representative of the judgment-debtor within

Rules not applicable to transferee *lite pendente.*

99. Nothing in Rules 96 and 98 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Orders conclusive subject to regular suit.

100. Any party not being a judgment-debtor against whom an order is made under Rule 95, Rule 96 or Rule 98 may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit (if any), the order shall be conclusive.

---

the meaning of Section 238, so as to make the order passed by the lower Court appealable (F. B.).— **37 T. L. R.,** *52* (= **10 T. L. J.,** *459*).

Ref.—38 T. L. R., 291 (= 13 T. L. J., 79). 19 T. L. J., 649.

**16.** See also—

Or. XXI, r. 94.—**14 T. L. R.,** *14*.
**18 T. L. R.,** *157*.
„ r. 96.—**3 T. L. R.,** *58*.
**9 T. L. R.,** *46*.

---

**Or. XXI, r. 99** [ = S. 322 = *Or. XXI, r. 102* ]

The corresponding Section of the old Regulation was as follows :—

"322. *Transfer of property by judgment-debtor after institution of suit.*—Nothing in Section 320 or 321 applies to a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree is made."

---

**Or. XXI, r. 100** [ = S. 321, last Para and S. 324 = *Or. XXI, r. 103* ]

I. The last Para of Section 321 of the old Regulation corresponding to this Rule was as follows :—

" The party against whom an order is passed under this Section may institute a suit to establish the right which he claims to the present possession of the property ; but subject to the result of such suit, if any, the order shall be final."

II. For the other Paragraphs of the old Section 321, see under Rules 97 and 98 of this Order. For Section 324, see under Rule 98.

**Case Law.**

1. The last Para of Section 321 says that the suit must be "to establish the right to present possession," and not the right claimed to the property in dispute as in the case of a claim dismissed under Section 280 [=Or. XXI, r. 61]. The suit in the former case is in fact a purely possessory suit, while that in the latter case would be one on title. A suit on title is not affected by the Rule.— **21 T. L. R.,** *183*.

**2.** See also—

Or. XXI, r. 96.—**7 T. L. R.,** *129*.

---

# ORDER XXII.

## Death, Marriage and Insolvency of Parties.

No abatement by party's death, if right to sue survives.

1. The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

**Or. XXII : Case Law.**

The provisions of Order XXII and the time prescribed under Article 161 of the Limitation Regulation relating to the impleading of the legal representatives of a deceased plaintiff can have no application to cases where a corporation either aggregate or sole, is the plaintiff. On a careful reading of Rules 1, 3 and 4 of this Order, the only provisions in the Code relating to abatement, it is doubtful whether the civil death of any party has been in the contemplation of the Legislature. A corporation is a fictitious body invested by law with the attributes of a person having a corporate name by which he can sue or be sued and hold properties, but enjoy immortal existence by reason of the perpetual succession of its members. This would indicate that the change in its members or officers would not affect its rights to sue or be sued, such rights having to be regarded by the general law in force relating to Companies and the special rules embodied in its Articles, &c.

If there has been any change in the personnel the party alleging the competency of the person on record to represent the Company should appraise the Court of the same whereupon a notice will have to be issued to the person concerned. On the Court being satisfied as to the competency of the plea, the Court should fix a time for the competent person coming in, requiring the person already on record to arrange for the same. If default is made to comply with this direction, the Court ought to proceed under Order XVII, Rule 3.

The subscription and verification of a plaint under Order XXIX, Rule 1, cannot constitute the person signing, the plaintiff in the case. It is the corporation which is the plaintiff.— **45 T. L. R.**, *47* (**=19 T. L. J.**, *264*).

**Or. XXII, r. 1** [=S. 346=*Or. XXII, r. 1*]

I. Section 346 of Regulation II of 1065, which is reproduced here, had the following four Illustrations appended to it. The Section with the Illustrations was the same as Section 361 of the Indian Code of 1882 :-

*Illustrations.*

"(*a*) A covenants with B and C to pay an annuity to B during C's life. B and C sue A to compel payment. B dies before the decree. The right to use survives to C, and the suit does not abate.

(*b*) In the same case, all the parties die before decree. The right to sue survives to the representative of the survivor of B and C, and he may continue the suit against A's representative.

(*c*) A sues B for libel. A dies. The right to sue does not survive, and the suit abates.

(*d*) A, a member of a Hindu joint family under the Mitakshara law, institutes a suit for partition of the family property. A dies leaving B, a minor son, his heir. The right to sue survives to B, and the suit does not abate."

II. The Indian Select Committee of 1903 ommtted Illustrations (*a*) and (*b*) "as founded upon an antiquated decision [Anderson V. Martindale (1801), 1 East 497] which is not very intelligible to practitioners in this country.

"Illustration (*d*) is correct only under the *Dayabhaga* system and the word 'minor' has been omitted as not of the essence of the example."— *India Gazette dated 21-3-1903, Pt. V.*

III. The two Illustrations thus retained were omitted by the Indian Special Committee who said :—"The Select Committee struck out two of the four Illustrations to Section 361 and the Committee think the remaining Illustrations may also be deleted as they are too obvious to serve any useful purpose."

**Case Law.**

1. The principle of abatement embodied in Section 346 does apply to proceedings up to the decree of the Appellate Court.— **14 T. L. R.,** *156.*

2. When in the course of a suit by the plaintiff (a Mahomedan woman) against the defendant, her brother, for recovery of certain properties, the plaintiff died leaving her husband, three sisters and two brothers besides the defendant as heirs and the two brothers (other than the defendant) and two sisters alone applied to be impleaded as heirs of the plaintiff :

*Held.*—(1) The right to sue did not survive to the petitioners as their cause of action against the defendant was substantially different from that of the deceased plaintiff. The "right to sue" means the right to bring a suit asserting a right to the same relief which the deceased plaintiff asserted at the time of the said plaintiff's death.

(2) The petitioners, not having brought on record all the representatives of the deceased plaintiff, could not proceed with the suit.— **11 T. L. J.,** *411.*

3. The abatement of the appeal by the death of one of the respondents cannot affect the prosecution of the appeal against the other respondents when the right of appeal survives against them.— **14 T. L. J.,** *267.*

4. The maternal grandfather of a minor applied for the appointment of himself or his elder son as guardian of the minor, the parties being Hindus governed by the Mithakshara Law. The lower Court rejected the application as it was not shown that the minor had any separate property, and as no guardian could be appointed for his undivided share in the joint family properties. The grand-father appealed to the High Court. Pending the appeal, he died. The petitioner, his eldest son, applied for being brought on the record, so that he might prosecute the appeal. The counter-petitioner who was the manager of the family to which the minor belonged objected on the ground that the application of the grand-father was a purely personal one which had abated with his death.

*Held*—As the application of the grand-father was based on a character common to himself and the petitioner, the right to prosecute the appeal survived to the petitioner, and the appeal did not, therefore, abate.— **40 T. L. R.,** *161* (= **15 T. L. J.,** *49*).

5. An elephant was attached for a decree against the second defendant. The plaintiff put in a claim petition on the ground that, long before the date of the attachment, the elephant had ceased to be the property of the second defendant and had become the plaintiff's property. The execution Court dismissed his claim. The present suit was for a declaration that the elephant was the property of the plaintiff on the date of the attachment and was hence not liable to be attached for the second defendant's debt and for a cancellation of the order of the execution Court dismissing the plaintiff's claim. Pending the suit, it was represented to the Court that the elephant was dead, and the Court, without more, dismissed the suit.

*Held.*—It was difficult to understand the *rationale* of the lower Court's judgment. It looked almost as if the lower Court

Procedure where one of several plaintiffs or defendants dies and right to sue survives.

2. Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs or against the surviving defendant or defendants.

Procedure in case of death of one of several plaintiffs or of sole plaintiff.

3. (1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under Sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

---

thought that, with the death of the elephant, the suit abated. But the result was impossible because the elephant was not a party to the suit either as plaintiff or as defendant. The death of the elephant did not make the question of the ownership of the elephant while it was alive "untriable". Nor did it make the trial quite infructuous. The decree of the lower Court was reversed and the suit remanded for trial on the merits.— **19 T. L. J.,** *320.*

**6.** See also—

Sec. 30.— **17 T. L. R.,** *182.*

Or. XXII, r. 3.—**11 T. L. J.,** *42.*

**Or. XXII, r. 2** [=S. 347 = *Or. XXII, r. 2*]

**Case Law.**

**1.** The only result of bringing a suit against a dead man is that there is no suit cognisable *as against that dead man or his property*, and not to put an end to the suit as against the living defendants also.

If he was the sole defendant, the suit ought to have been dismissed as brought against a dead man, no longer existent in the eye of the law as a legal individual, the provisions about bringing in legal representatives applying only to cases where the defendant died after the suit was brought (31 Mad., 86).— **25 T. L. R.,** *188.*

Fol.—30 T. L. R., 171 (= 4 T. L. J., 408).

**2.** See also—

Or. XXII, r. 3.—**1 S. D.,** *337.*

**Or. XXII, r. 3** [=S. 348, 349, 350 =*Or. XXII, r. 3*]

I. The three Sections of Regulation II of 1065, whose provisions have been amalgamated, amended and enacted in this Rule, were as follow:—

"348. *Procedure where one of several plaintiffs dies and right to sue does not survive to surviving plaintiffs alone.*—If there are more plaintiffs than one, and any of them dies, and if the right to sue does not survive to the surviving plaintiff or plaintiffs alone, but survives to him or them and the legal representative of the deceased plaintiff jointly, the Court may cause the legal representative, if any, of the deceased plaintiff to be made a party, and shall thereupon cause an entry to that effect to be made on the record and proceed with the suit."

"349. *Procedure in case of death of sole or sole surviving plaintiff.*—In case of the death of a sole plaintiff or sole surviving plaintiff, the legal representative of the deceased may, where the right to sue survives, apply to the Court to have his name entered on the record in place of the deceased plaintiff, and the Court shall thereupon enter his name and proceed with the suit."

"350. *Abatement where no application by representative of deceased plaintiff.*—If, within the time limited by law, no such application be made to the Court by any person claiming to be the legal representative of the deceased plaintiff, the Court may pass an order that the suit shall abate, and shall, on the application of the defendant, award to the defendant the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff;

or the Court may, if it think proper, on the application of the defendant, and upon such terms as to costs or otherwise as it thinks fit, pass such other order as it thinks fit for bringing in the legal representative of the deceased plaintiff, or for proceeding with the suit in order to a final determination of the matter in dispute, or for both those purp[illegible]s.

*Explanation*—A certificate of heirship, or a certificate to collect debts, does not of itself constitute the person holding it the legal representative of the deceased. But when the person holding any such certificate obtains thereby property belonging to the deceased, he may be treated as a legal representative liable in respect of such property."

II. See Rule 12 *Infra,*

### Case Law.

1. During the pendency of an appeal against a decision which was against the interest of his Tarwad, the appellant died and a junior member of the same Tarwad applied within the statutory period for sanction to prosecute the appeal and make the Karanavan a respondent if he was unwilling to be made an appellant. The Karanavan appeared before the Court and refused to prosecute the appeal. The District Judge held that the appeal had abated as the Karanavan failed to apply in time.

*Held.*—As the Munsiff's decree was against the interests of the Tarwad which the law enables every member to protect, the Judge's order was wrong. The said junior member should be allowed to prosecute the appeal after making the Karanavan a respondent if he is unwilling to be made a co-appellant.— **17 T. L. R.,** *15.*

Ref.—24 T. L. R., 195.
40 T. L. R., 151.

2. Where in a suit the second plaintiff died and the eighth defendant, after nine months had elapsed, put in a petition apparently under Clause 1 of Section 350, C. P. C. before the lower Court praying that an order be passed declaring the suit to have abated and the defendant be awarded his costs and the Court passed an order to the effect that the petition was to be recorded and would be considered at the disposal of the suit:

*Held.*—The lower Court had not expressed any opinion upon the question whether

the right to sue survived, and as the matter was still open, it was not for the Appellate Court to discuss it. The appeal preferred against the said order of the lower Court was premature.— **1 S. D.**, *337*.

**3.** A person who claims as the senior member of his family to continue a suit for damages instituted by a deceased plaintiff on behalf of his family, need not produce a succession certificate before he can claim a decree in his favour.

The legal representative whose presence on the record is contemplated by Sections 349 and 350, C. P. C., is not necessarily the holder of a certificate under the Succession Certificate Regulation IX of 1090 (See Explanation to Section 350, C. P. C.). The question, therefore, as to who the legal representative of a deceased plaintiff is, for the purpose of Chapter XXI, C. P. C. [Old —The Death, Marriage and Insolvency of Parties], must be decided by the Court in which the suit is pending, unless action is taken under Section 351, C. P. C. [= Or. XXII, r. 5] (F. B.).—**33 T. L. R.**, *59* (= **7 T. L. J.**, *105*).

**4.** One L sued for recovery of her father's one-fifth share of the plaint properties, alleging she was the heir of her deceased father. During the pendency of the suit, she died, and the primary Court, in ignorance of her death, dismissed the suit on the ground that neither the plaintiff nor the defendants were present. Plaintiff, as heir of his deceased wife L, brought the present suit for recovery of one-fifth share of the plaint properties on foot of a gift-deed executed in favour of his wife by her father. The defendants contended, *inter alia*, that the order dismissing L's suit was an order of abatement under Section 350 and operated as a bar to the present suit. The primary Court decreed for plaintiff. The lower appellate Court, however, reversed the decree of the original Court holding that the decision in the former suit was an order of abatement under Section 350 and that, under Section 355 of the Code [=Or. XXII, r. 9], the present suit was not maintainable, as in its view, the cause of action in the present suit was identical with the cause of action in the former suit, the cause of action in either suit being the defendant's refusal to surrender L's share of the properties. In special appeal, it was contended for plaintiff-special appellant—that the order dismissing the former suit should have been regarded as one passed under Section 92, C. P. C. [= Or. IX, r. 8].

*Held*.—The order dismissing L's suit should be regarded as an order of abatement under Section 350, C. P. C.

The two suits were based on different causes of action and the former suit was not a bar to the present suit.

Section 39 [= Or. II, r. 2] does not say that every suit shall include every cause of action, or every claim which the party has, but every suit shall include the whole of the claim arising out of the same cause of action—meaning the cause of action for which the suit is brought.

The Section is directed to securing the exhaustion of relief in respect of a cause of action, and not to the inclusion in one and the same action of different causes of action, even though they arise from the same transactions.

Cause of action has no relation whatever to the defence which may be set up by a defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action, or, in other words, to the *media* upon which the plaintiff asks the Court to arrive at a conclusion in his favour.— **35 T. L. R.**, *80*.

Ref.— 38 T. L. R., 27 (= 12 T. L. J., 248).
19 T. L. J., 549.

**5.** On the death of P. who originally instituted the suit, the appellant applied to

be brought on the record as the legal representative of the deceased. The application was, after due notice, allowed and the appellant was added as the second plaintiff. The question was whether the appellant could claim a decree in his favour, as the legal representative of the deceased plaintiff, without the production of a certificate under Regulation IX of 1090 (Succession Certificate).

*Held.*—The Regulation does not apply. A person who is brought on the record, as the legal representative of a deceased plaintiff, can claim to have a decree passed in his favour, without the production of a certificate under the Regulation.

Section 351 C. P. C. [= Or. XXII, r. 5] lays down the procedure to be followed by the Courts, should any dispute arise as to who is the legal representative of a deceased plaintiff; and it provides that the suit may be either stayed until the question has been determined in another suit; or that the Court may itself decide the dispute by an order made in the suit. The person who is thus brought on the record can claim to have a decree passed in his favour as the legal representative of the deceased, inasmuch as in the eye of the law he continues the existence of the deceased. Moreover, Section 348 C. P. C., imperatively requires the Court to proceed with the suit after the legal representative has been placed on the record. The Explanation to Section 350 also suggests this conclusion.—

**8 T. L. J.**, *413*.

**6.** In the appeal, the plaintiff-appellant, a childless Nanjanad Vellala woman, prayed for having the amount awarded to her by the lower Court as Nangudama enhanced. During the pendency of the appeal, the appellant died. Her daughter's son thereupon applied to be impleaded as her representative and to be allowed to prosecute the appeal.

*Held.*—The application was not maintainable under Sections 349 and 551, of the C. P. C., inasmuch as the "right to sue" did not survive. The expression "right to sue" meant the right to bring a suit asserting a right to the same relief which the deceased plaintiff has asserted at the time of the death. In the case under consideration, it could not be said that, if the plaintiff had died before the institution of the suit, her representative could have brought a suit for the recovery of the Nangudama which she would have been entitled to recover from her husband's estate. The claim for Nangudama was only a personal claim which ceased to be enforceable except when the same had been perfected by a judgment. So far as the claim for enhanced Nangudama was concerned, the plaintiff's suit had to be considered to have been dismissed; in other words, it had to be considered not to have been perfected by a judgment.—

**11 T. L. J.**, *42*.

Ref.—39 T. L. R., 196
(= 13 T. L. J., 190).

**7.** "For convenience and speedy disposal of suits, the Court can act summarily in recognising any person who seems to have a *prima facie* title as legal representative for conducting or defending the suit in place of a deceased plaintiff or defendant, and if the suit is *bona fide* conducted or defended by the party so admitted, it binds the deceased's estate and all his heirs. If this were not so, it would in no few cases be practically impossible to secure a complete representation of the party dying pending a suit, and it would be especially so, in the case of a Mahomedan party."—

**15 T. L. J.**, *232*.

**8.** See also—

Sec. 2 (2).—**21 T. L. R.**, *191*.
**1 T. L. J.**, *169*.
**15 T. L. J.**, *226*.
Or. XXII, r. 1.—**11 T. L. J.**, *411*.

Procedure in case of death of one of several defendants or of sole defendant.

4. (1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under Sub-rule (1), the suit shall abate as against the deceased defendant.

---

Or. XXII, r. 4 [=S. 352 = *Or. XXII, r. 4*]

I. The corresponding Section of Regulation II of 1065 was as follows :—

" 352. *Procedure in case of death of one of several defendants, or of sole or sole surviving defendant.*—If there be more defendants than one, and any of them die before decree and the right to sue does not survive against the surviving defendant or defendants alone,

and also in case of the death of a sole defendant, or sole surviving defendant where the right to sue survives,

the plaintiff may make an application to the Court, specifying the name, description and place of abode of any person whom he alleges to be the legal representative of the deceased defendant, and whom he desires to be made the defendant in his stead,

The Court shall thereupon enter the name of such representative on the record in the place of such defendant,

and shall issue a summons to such representative to appear on a day to be therein mentioned to defend the suit ;

and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant and had been a party to the former proceedings in the suit :

Provided that the person so made defendant may object that he is not the legal representative of the deceased defendant, or may make any defence appropriate to his character as such representative.

When the plaintiff fails to make such application within the period prescribed therefor, the suit shall abate, unless he satisfies the Court that he had sufficient cause for not making the application within such period.

The legal representative of a deceased defendant may apply to have himself made a defendant in place of the deceased defendant, and the provisions of this Section, so far as they are applicable, shall apply to the application and to the proceedings and consequences ensuing thereon."

II. See Rule 12 *Infra*.

III. For Form of Summons to legal representative of a deceased defendant, see Appendix E, Form No. 5.

### Case Law.

1. An application to bring in the legal representative of a deceased person as party

may be made within sixty days from the date of the death of the deceased person; and a suit cannot be dismissed before the lapse of these sixty days for failure to bring in the deceased's representative as a party on the record.— **13 T. L. R.,** *126.*

**2.** As soon as it is proved that a defendant was dead at the time the plaint was filed, the Court ought to refuse to proceed further in the suit and should leave it to the plaintiff to begin *de novo* against the person against whom alone he can legally move.

A purchaser of properties had agreed to pay a portion of the purchase-money to a creditor of the vendor; but the creditor having declined to accept payment from the purchaser, the vendor paid the money due to the creditor. In a suit brought for recovery of the unpaid portion of the purchase-money from the purchaser who was dead at the time the plaint was filed:

*Held,*—The suit should have been thrown out. The lower Court was wrong in having allowed the plaintiff to substitute another in the place of the defendant and continue his action.

The Sections of the Civil Procedure Code relating to the bringing in of legal representatives of deceased parties are applicable only where the death takes place *pending the suit* and not where, even before suit, the party supposed to be impleaded had died — **2? T. L. R.,** *200.*

Affirmed,—17 T. L. J., 158.

**3.** An application by the plaintiff to bring in the legal representative of a deceased defendant who died pending the suit is one falling under Section 352, and should be made within sixty days as provided by Art. 147 of the Limitation Regulation, unless sufficient cause was shown for the delay.— **22 T. L. R.,** *266.*

**4.** Section 352, C. P. C., which applies to the case of the death of a respondent, seems to leave the selection of deceased's legal representative to the choice of plaintiff or appellant. The Section may be construed as giving no right to the appellant that any particular person shall not be a respondent, though it gives him the right to determine his own respondent.— **1 S. D.,** *204.*

**5.** Where in a suit the plaintiff's application to bring in the representatives of his brother the fifth defendant was made 4½ months after the death of the latter and the lower Court allowed the application holding that Section 355 or 356 [=r. 9 or 10] applied and the limitation was three years:

*Held,*—The limitation was only 60 days.

On the evidence, there was no sufficient cause for the delay.— **K. P.,** *273.*

**6.** In a suit for redemption the defendant, mortgagee, died. His son who was already a defendant in the case falsely represented to the plaintiff that he was the devisee under his father's will, and the plaintiff therefore did not apply to implead the legal representatives till long after the period prescribed for making the application had expired.

*Held.*—These circumstances amounted to "*sufficient cause*" for not making the application in time.

It is difficult and undesirable to attempt to define precisely the meaning of the words "sufficient cause" or "sufficient reason."

To do so would be to crystallise into a rigid definition that judicial power and discretion which the Legislature has for the best of all reasons left undetermined and unfettered.

The words "sufficient cause" in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice when no negligence or inaction nor want of *bona fides* is imputable to the appellant or applicant for review.— **1 T. L. J.,** *397.*

7. Where the liability of the defendants is joint and several, the death of one of the defendants without his representatives being brought on record cannot exonerate the other defendants from liability.— **13 T. L. J.**, *43*.

8. Where the Munsiff made an order to the effect that the suit abated owing to the failure of the plaintiff to implead the legal representative of the deceased defendant in time:

*Held*.—The Munsiff had jurisdiction under the penultimate paragraph of Section 552 to vacate the order of abatement made in consequence of the plaintiff's apparent laches.— **13 T. L. J.**, *392*.

9. Where after the filing of an appeal, the legal representative of a deceased respondent is impleaded during the course of one proceeding in the appeal, this impleading is valid and sufficient for all the subsequent proceedings therein.—**14 T. L. J.**, *381*.

10. During the progress of a partition suit in the District Court, a defendant died. The plaintiff made an application under Section 352 of the C. P. C., to implead the legal representatives of the deceased defendant, but the application was dismissed as time-barred. The plaintiff thereupon made a second application under Section 28 [=Or. I, rr. 8 (2), 10 (2) & (3) and 11]. The District Court without proceeding under either of the two above-mentioned Sections impleaded the legal representatives of the deceased defendant in the exercise of its inherent powers, stating that in a particular suit all the parties should be before the Court.

*Held*.—The order of the District Court was wrong. Though the Court has inherent powers to correct its own mistakes, it had no powers to correct the mistakes of the parties. Inherent powers of the Court were not to be invoked in order to relieve a party from the consequences of his own mistake or to enable him to evade the law of limitation. As the time allowed by law for impleading the legal representatives of the deceased defendant had expired before the application to implead was put in, the lower Court should not have gone to the rescue of the plaintiff by invoking its inherent powers.— **15 T. L. J.**, *371*.

11. Order XXII, Rule 4, relates only to applications to bring in legal representatives on record of defendants who were alive at the date of the suit but died subsequently. It does not apply to cases where a defendant had died before the date of the suit; and the Court will have no jurisdiction under such circumstances to allow the plaintiff to substitute another in the place of the defendant and continue his action. The provisions of Rule 10 of Order I expressly conferring powers of substitution only in cases of the institution of suits *bona fide* in the name of the wrong plaintiff, appear to warrant this view.—**17 T. L. J.**, *158*.

12. Ignorance of the factum of the death of a defendant, if pleaded *bona fide*, would *per se* constitute 'sufficient cause' within the meaning of Section 352, and be a valid excuse for delays in such applications. What Courts have to do in such cases is to consider this plea along with the attendant circumstances, and to refuse such application if it is made out that the applicant has been guilty of negligence or laches, or if the delay has been made *mala fide*. Where no negligence in action or want of *bona fides*, is imputable to the applicant, the delay should always be condoned.

The old Code did not make abatement of suits, on the expiry of the prescribed time imperative in the case of death of defendant. Under the new Code abatements have been made imperative upon the expiry of the prescribed time, in the case of the death of plaintiffs and defendants and the provisions relating to cancellation of orders of abatements made applicable in both the above cases.— **18 T. L. J.**, *1088*.

13. A suit was instituted against a person as Karanavan of a Tarwad. He died during the progress of the suit. Persons who were

5. Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court:

Determination of question as to legal representative.

Provided that an Appellate Court before determining it may direct any subordinate Court to try the question and to return the evidence, if any, taken together with its finding and reasons therefor and may take the same into consideration in determining the question.

---

not really representatives of the Tarwad, though *bona fide* thought to be so, were added as parties to the suit and a decree was obtained. The question was raised as to whether the decree was binding on the real Karanavan of the Tarwad.

*Held.*—The decree could not bind the real Karanavan of the Tarwad. It is a well-known rule of Malabar law that the Karanavan alone can represent the Tarwad and can sue and be sued on behalf of the Tarwad.— **19 T. L. J.**, *1.*

**14.** See also—

Or. XXII, r. 1.—**14 T. L. J.**, *267.*
,, r. 2.—**25 T. L. R.**, *188.*
,, r. 3.—**15 T. L. J.**, *232.*

**Or. XXII, r. 5** [=S. 351=*Or. XXII, r. 5*]

I. The corresponding Section of Regulation II of 1065 was as follows :—

"351. *Procedure in case of dispute as to representative of deceased plaintiff.*—If any dispute arise as to who is the legal representative of a deceased plaintiff, the Court may either stay the suit until the fact has been determined in another suit, or decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit."

II. The Proviso to the Rule was added by the Select Committee.

III. The Notes on Clauses say :—"This Rule proposes to enact that the question of who is legal representative should be decided in the suit itself, and does not give the option, now in force, to stay the suit till such question is decided in a fresh suit. An indefinite stay of suit for the purpose of ascertaining the right legal representative is to be deprecated, while the question could be as easily tried in the suit itself."

**Case Law.**

**1.** One S, a member of the Cutch-Memon community, who was plaintiff in 3 suits and defendant in the 4th, died leaving behind him a widow, two minor sons and a daughter by her, 3 other minor sons by another widow and a brother. The brother set up that Hindu law was applicable to the community and that he and his brother being undivided he should be made along with the minor sons the legal representative of the deceased and also the next friend or guardian of the minors. The widow set up that Mahomedan Law was applicable and that she, her daughter and her 2 minor sons should be made the legal representatives with herself as their next friend or guardian. She denied the rights of the other sons. The District Judge made the brother with the 5 sons legal representatives, but appointed him and the widow together as next friends or guardians *ad litem.*

*Held* (*by Sadasiva Iyer, C. J., Muttunayagom Pillai, J.*, concurring).—(1) For convenience and speedy disposal of suits any person having a *prima facie* title can be made a legal representative for the purposes of the suit and only for that purpose, though such person may be only one of several legal representatives or may not be

the true legal representative. A person prosecuting or defending a suit as the legal representative of a deceased party will of course be accountable to others who like himself are also the legal representatives of the deceased or to be the true legal representatives as the case may be. It all depends upon the balance of convenience whether to leave the rival claimants to determine their priority by a separate suit, or to appoint one of them as representative.

(2) The language of Section 351 does not mean that the Court is bound to select one set only of the rival claimants as the person or persons who shall be admitted to be such legal representatives for the purpose of prosecuting the suit. In order to prevent the defendant from objecting that the true representative has not been brought in, both the claimants can be made legal representatives for the purpose only of continuing the suit if that course is not inconvenient.

(3) As for the matter of guardianship, although no appeal lies against an order appointing next friends or guardians *ad litem*, yet the High Court as a Court of Revision could interfere.

(4) As both the brother and the widow claim each a share as heir of the deceased, their interests are opposed to those of the minor sons and hence they could not be appointed guardians of the minors.—

**24 T. L. R., *131*.**

Fol.—26 T. L. R., 141
(=1 T. L. J., 224).
15 T. L. J., 232.
Ref.—28 T. L. R., 229
( = 3 T. L. J., 191).
Dist.—19 T. L. J., 1.

[Note the effect of the new Rule].

**2.** In a suit between A and B, A died after filing a special appeal and C applied to the High Court to be made the legal representative of the deceased. B denied C's right to represent A, and on a special issue remitted by the High Court, the lower Courts concurrently found in favour of C and the High Court, on the strength of this finding, brought C on record and allowed him to prosecute the special appeal.

*Held.*—Such an order did not operate as ***res judicata*** in a subsequent suit where the question as to who was the heir of A arose for decision.

When the Court before which a particular suit is pending takes upon itself the duty of deciding at or before the hearing, the dispute as to who is the legal representative, such decision is, under Section 351, Civil Procedure Code, for the purpose of finding out merely "who shall be admitted to be such legal representative for the purpose of prosecuting the suit." The Legislature advisedly thus restricted the operative force of decisions of the kind above stated apparently on the ground that the proceedings which culminate in them are more or less of a summary nature and therefore, the weight ordinarily attaching to decisions on questions of fact which are brought in issue between the parties and which are fought out by them in suits and in proceedings which are not merely of an interlocutory or summary nature, but in which the orders passed are appealable and are given the force of decrees, should not be given to such summary decisions.—

**28 T. L. R., *229***
**(=3 T. L. J., *191*).**

[Note the effect of the new Rule].

**3.** When the 1st Munsiff allowed the counter-petitioner's prayer to represent the deceased plaintiff in the suit, the petitioner appealed against that order and his claim to represent the deceased was recognised by the 2nd on remand. In the interval, the counter-petitioner apparently colluded with the defendant and got the suit struck off by the 1st Munsiff. Thereupon, the petitioner appealed against the latter order which was dismissed while his right of appeal was admitted.

No abatement by reason of death after hearing.

6. Notwithstanding anything contained in the foregoing Rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.

Suit not abated by marriage of female party.

7. (1) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may be executed against her alone.

(2) Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

---

*Held* (remanding the case to the lower Appellate Court for decision on the merits). —The 1st Munsiff's order striking off the case was a nullity as it was done at the request of a party who did not represent the deceased.— **K. P.**, *307.*

4. Where a question arises as to whether any person is or is not the legal representative of a deceased party, it is the duty of the Court to decide the question. When the question arises before an Appellate Court, the case may be remanded to a subordinate Court; and this would ordinarily be the correct procedure where the question as to which of the two contesting parties is the legal representative depends on the decision of a disputed question of fact, as regards which evidence is necessary.—

**19 T. L. J.**, *198.*

5. See also—

Sec. 2 (2). —**1 T. L. J.**, *169.*

„ 10. —**25 T. L. R.**, *54.*

Or. XXII, r. 1.—**14 T. L. J.**, *267.*

„ r. 3.—**17 T. L. R.**, *15.*

**8 T. L. J.**, *418.*

**11 T. L. J.**, *42.*

**Or. XXII, r. 6** [= „ =*Or. XXII, r. 6*]

**Or. XXII, r. 7** [ = S. 353= *Or. XXII, r. 7*]

The corresponding Section of Regulation II of 1065 ran as follows:—

"353. *Suit not abated by marriage of female party.*—The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may thereupon be executed against her alone.

If the case is one in which the husband is by law liable for the debts of his wife, the

8. (1) The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof within such time as the Court may direct.

When plaintiff's insolvency bars suit.

(2) Where the assignee or receiver neglects or refuses to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency, and the Court may make an order dismissing the suit and awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the plaintiff's estate.

Procedure where assignee fails to continue suit or give security.

---

decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may with such permission be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree."

Or. XXII, r. 8 [=S. 354=*Or. XXII, r. 8*]

I. The corresponding Section of Regulation II of 1065 was as follows :—

"354. *When plaintiff's bankruptcy or insolvency bars suit.*—The bankruptcy or insolvency of a plaintiff in any suit shall not bar the suit, but the Court in which the suit is pending may, in its discretion, call upon the plaintiff to give security for costs of the defendant and, if the security be not given within the time fixed, shall dismiss the suit with costs."

II. "*Rule 8.* This provides for an official assignee or Receiver continuing a suit instituted by a person subsequently declared insolvent."— *Notes on Clauses.*

III. See Rule 12 *Infra.*

**Case Law.**

1. A District Judge dismissed a pauper suit on the ground that the plaintiff who is a resident of Travancore failed to furnish security for the costs of the defendants as directed by the Court.

*Held.*—The order of the Judge was illegal as there is no law for authorising an original Court to direct the furnishing of security for defendant's costs as a condition precedent to the trial of the suit, except it be Section 365 which, however, applies only to cases where the plaintiff resides out of Travancore and is not possessed of sufficient immovable property in Travancore. The object of the provisions contained in Chapter XXI [Of the death, marriage and insolvency of parties] was to prevent the abatement of suits by any occurrences of the sort therein alluded to after the institution of a suit, and to lay down the conditions on which a suit may be proceeded with to trial after such occurrences *pendente lite* and Section 354 which occurs in that Chapter was not intended to be applied to a pauper plaintiff who was permitted by the Court in the first instance to conduct his suit as a pauper.

9. (1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

Effect of abatement or dismissal.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of Section 5 of the Limitation Regulation, 1062, shall apply to applications under Sub-rule (2).

II of 1062.

---

A suitor would not be permitted by a Court to file his plaint *in forma pauperis* unless it is satisfied that his allegations disclose a good cause of action fit to be tried and that he has not the means of paying the requisite Court fees, and it would ordinarily defeat the intention of the law if a pauper were called to find security for the defendant's costs.— **15 T. L. R.,** *178.*

Fol.—44 T. L. R., 455
(= 19 T. L. J., 150).

**2.** Where a District Judge granted a review of the order passed by him to the effect that the plaintiff who sued as a pauper should furnish security for the costs of defendants and it was argued that the Judge was wrong in granting the review :

*Held.*—The District Judge was right in granting the review.

The Judge was right in cancelling his former order as there was no evidence to show that the plaintiff was not a resident of Travancore and as the poverty of a plaintiff was no reason for calling upon him to furnish security for the costs of the opposite party.

If pauper plaintiffs were, simply because they are paupers, required to furnish security, it would nullify the good intentions of the Government who have made special provision to assist such persons in recovering their just claims.—

**17 T. L. R. App.,** *20.*

**Or. XXII, r. 9** [=S. 355=*Or. XXII, r. 9*]

The corresponding Section of Regulation II of 1065 was as follows :—

"355. *Effect of abatement or dismissal.* —When a suit abates or is dismissed under this Chapter, no fresh suit shall be brought on the same cause of action.

*Application to set aside abatement or dismissal.*—But the person claiming to be the legal representative of the deceased or bankrupt or insolvent plaintiff, may apply for an order to set aside the order for abatement or dismissal; and, if it be proved that he was prevented by any sufficient cause from continuing the suit or furnishing security, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit."

["This Chapter," referred to, is Chapter XXI which deals with the Death, Marriage and Insolvency of Parties. ]

**Case Law.**

**1.** The abatement of a suit does not extinguish the rights of the plaintiff, but only

10. (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

Procedure in case of assignment before final order in suit.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of Sub-rule (1).

---

prevents him or those claiming under him from suing again on the same cause of action.

A right itself cannot constitute a cause of action. To succeed, every plaintiff must show not only a right but also some other fact rendering the interference of the Court necessary, *e. g.*, some interference with that right by the defendant.

To ascertain the cause of action in a suit, one must look only to the plaint and should not consider the contentions in the written statement at all. The cause of action consists in the whole bundle of facts which the plaintiff has to prove in order to succeed. One of these facts by itself does not constitute the cause of action.

Neither the fact that the acts complained of are similar nor the fact that the reliefs claimed are similar will make the causes of action in two suits the same.

"The cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action, or, in other words, to the *media* upon which the plaintiff asks the Court to arrive at a conclusion in his favour."—

**19 T. L. J.**, *549*.

**2.** See also.—

Sec. 32.—**5 T. L. R. App.**, *9*.

" 45.—**31 T. L. R.**, *250*.

Or. XXII, r. 3.—**35 T. L. R.**, *80*.

" r. 4.—**1 T. L. J.**, *397*.

---

**Or. XXII, r. 10** [= S. 356
= *Or. XXII, r. 10*]

The corresponding Section of Regulation II of 1065 was as follows :—

"356. ***Procedure in case of assignment pending suit.***—In other cases of assignment, creation or devolution of any interest pending the suit, the suit may, with the leave of the Court, given either with the consent of all parties or after service of notice in writing upon them, and hearing their objections, if any, be continued by or against the person to whom such interest has come either in addition to, or in substitution for, the person from whom it has passed, as the case may require."

**Case Law.**

**1.** There is no provision of law which forbids the original parties to a litigation from conducting their part of the litigation. That the transfer of the rights of the parties pending a litigation does not entitle the transferees to take the place of the transferors on the record is clear from the language of Section 356 which requires that the transferee should obtain special leave of the Court to carry on the proceedings. A transfer of property which is the subject of a pending litigation is not, strictly speaking, an absolute alienation, as its validity depends on the result of the litigation. The transferor cannot, therefore, be said to have lost all his interest in the litigation. If he appeals, the Judge is competent to consider the whole case.— **10 T. L. R.**, *46*.

11. In the application of this Order to appeals, so far as may be, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal.

Application of Order to appeals.

12. Nothing in Rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.

Application of Order to proceedings.

---

2. The language of Section 381 of the C. P. C. [=Or. XXVI, rr. 13, 14], seems to contemplate the suit as pending till the final decree is passed dividing the suit property in accordance with the report of the commissioners that may be deputed under that Section. In this view, the application of a person who has acquired an interest in the suit by way of assignment pending the same, to be impleaded may be granted under Section 356.— **13 T. L. J., 5.**

Fol.—19 T. L. J., 5.
19 T. L. J., 428.

3. A preliminary decree was passed for partition and an assignee of the decree applied for execution. The decree-holder impugned the assignment as unsupported by consideration and fraudulent. The judgment-debtor also opposed the application. The lower Court held that the assignee was entitled to execute the decree, as the deed of assignment was admitted by the decree-holder and as no question of its validity could be gone into in execution. On appeal:

*Held*,—The suit terminates not by the preliminary decree but only by the final decree. Till that decree is passed the suit is pending, the preliminary decree constituting only a stage in the trial of the suit. The proceedings that may have to be taken to enable a final decree partitioning the properties by metes and bounds to be passed are therefore proceedings in the suit and not proceedings in execution.

The application of the assignee was not really an application under Order XXI, Rule 14, but one under Order XXII, Rule 10, which empowers the Court in its discretion to allow an assignee *pendente lite* of the right in suit to intervene and assume the further conduct of the suit.— **19 T. L. J., 5.**

4. Where the assignee of a preliminary decree applies for execution of such decree, the application is not one in execution, and hence Order XXI, Rule 14, does not apply. The application comes under Order XXII, Rule 10, which empowers the Court in its discretion to allow an assignee *pendente lite* of the right in suit to intervene and assume the further conduct of the suit. A suit terminates only by the final decree and not by a preliminary decree.— **19 T. L. J., 428.**

5. See also—
Sec. 85.—**26 T. L. R., 83**
**(= 1 T. L. J., 284).**

---

**Or. XXII, r. 11 [*Cf.* S. 551=*Or. XXII, r. 11*]**

For Section 551 of the old Regulation, see under Section 85.

---

**Or. XXII, r. 12 [= „ =*Or. XXII, r. 12*]**

---

## ORDER XXIII.

### Withdrawal and Adjustment of Suits.

Withdrawal of suit or abandonment of part of claim.

1. (1) At any time after the institution of a suit, the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim.

(2) Where the Court is satisfied—

(a) that a suit must fail by reason of some formal defect, or

(b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of a claim.

(3) Where the plaintiff withdraws from a suit, or abandons part of a claim, without the permission referred to in Sub-rule (2), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(4) Nothing in this Rule shall be deemed to authorise the Court to permit one of several plaintiffs to withdraw without the consent of the others.

---

**Or. XXIII, r. 1** [=S. 357=*Or. XXIII, r. 1*]

I. The corresponding Section of Regulation II of 1065 was as follows:—

"357. *Power to allow plaintiff to withdraw with liberty to bring fresh suit.*—If, at any time after the institution of the suit, the Court is satisfied on the application of the plaintiff (a) that the suit must fail by reason of some formal defect, or, (b) that there are sufficient grounds for permitting him to withdraw from the suit or to abandon part of his claim with liberty to bring a fresh suit for the subject-matter of the suit or in respect of the part so abandoned, the Court may grant such permission on such terms as to costs or otherwise as it thinks fit.

If the plaintiff withdraw from the suit, or abandon part of his claim, without such permission, he shall be liable for such costs as the Court may award, and shall be precluded from bringing a fresh suit for the same matter or in respect of the same part.

Nothing in this Section shall be deemed to authorise the Court to permit one of several plaintiffs to withdraw without the consent of the others."

II. 1. Sub-rule (1) contemplates a withdrawal of the suit and Sub-rule (2) a withdrawal from the suit. If a party desires to withdraw from the suit with liberty to bring a fresh suit, he must apply to the Court under Sub-rule (2) for permission so to withdraw. If he does not desire to withdraw from the suit, with liberty to bring a fresh suit, then he can under Sub-rule (1) withdraw the suit of his own motion, and for this, the Court's order is not necessary. *32 Bom., 345.*

2. Sub-rule (1) merely affirms the right of a plaintiff to withdraw a suit in whole or in part against all or any of the defendants, and is added to make the rule a complete enunciation of the law relating to the withdrawal of and from suits.

**Case Law.**

1. The plaintiff has the right to withdraw his suit unconditionally without the sanction of the Court. The only consequence of withdrawing a suit, without the permission of the Court is to debar the plaintiff from bringing a fresh suit with respect to the same cause of action. A formal order of the Court striking the case off the file is not, therefore, legally necessary to put an end to the suit when it is withdrawn, as in the case, unconditionally.—
**5 T. L. R.**, *122.*

Ref.—19 T. L. J., 303.

2. The plaintiff, lessor, sued defendant, holder of a registered lease for one year of certain Kandukrishi lands, for arrears of rent for six years and recovery of land, the tenant having held over. As the plaintiff did not produce Government sanction for institution of the suit, the Munsiff dismissed it. Subsequently a fresh suit was brought with Government sanction, which also the Munsiff dismissed under Section 357 C. P. C.

*Held.*—The want of Government sanction being a formal defect, the dismissal of the suit under Section 357 did not operate as a bar to a fresh suit on the same cause of action. "When a suit has failed through a formal defect, and the merits have not been so pronounced on, as to constitute a legal relation resting on the act of the Court, another suit is not, by the English Law, barred. The rule is consonant to justice and agrees with the law as set forth in the Code of Civil Procedure" (3 Bom., 223).— **24 T. L. R.**, *127.*

3. Where a suit is instituted on behalf of a Malabar Tarwad to cancel an alienation by the Karanavan and to recover property on behalf of the Tarwad, it is not competent for the plaintiffs (some only of the members of the Tarwad) to withdraw the suit when the other members of the Tarwad oppose the withdrawal on the ground that the withdrawal is prejudicial to the interests of the Tarwad.—
**2 S. D.**, *256.*

Ref.—16 T. L. J., 71.

4. In a suit of 1059, the plaintiff's ancestor as trustee of a Devaswom sued for arrears of rent of 1056 to 1058. That suit was withdrawn without the leave of the Court to institute a fresh suit. In the present suit for arrears of rent of 1076 to 1078 as also for the recovery of the property, it was contended that the present suit brought as it was on the same title as in the former case was barred by the provisions of Section 357.

*Held.*—(1) The present suit was not for the same matter as the former suit, the cause of action being different.

(2) Even if the cause of action was the same, the subsequent suit was maintainable.

(3) The withdrawal of a suit without leave could not be put on a higher footing than a dismissal of that particular claim.—
**4 S. D.**, *116.*

Ref.—19 T. L. J., 303.

5. A suit was withdrawn without permission being obtained to file another as mentioned in the second paragraph of Section 357.

*Held.*—Orders passed on such withdrawals are not appealable.

Such orders are not decrees.

The special appeal itself could not be treated as a revision petition, as the second appeal was against the decision of the District Court that no appeal lay. Different grounds would be necessary if revision was sought.— **7 T. L. J.**, *6*.

Ref.—19 T. L. J., 673.

**6.** The plaintiff as the direct nephew of defendants 1 and 2 sued to set aside a mortgage of Tarwad property granted by them to 3rd defendant on the ground that the mortgage was not supported by consideration and necessity. The defendants denied the status of the plaintiff as a member of the Tarwad and contended that the mortgage was supported by consideration and necessity. The suit was tried on the merits and dismissed by the trial Court. An appeal was preferred to the District Court, and while it was pending, the appellant-plaintiff applied for leave to withdraw from the suit with permission to institute a fresh suit for declaration of his title to the Tarwad of defendants 1 and 2. The application was allowed on the grounds that the appellant's title to the properties was not sufficiently investigated in the suit and that it would be unfair to the appellant that his title to the properties worth a lakh of rupees should be disposed of in a suit which was valued at 700 Fs. The validity of this order was challenged in revision by the respondent-defendant. The objections taken to the order were first, that the Appellate Court had no jurisdiction to make the order under Section 357 inasmuch as the expression "sufficient grounds" occurring in the second Clause of the Section must be analogous to the "formal defects" mentioned in the previous Clause; and secondly, that assuming that it had the jurisdiction, it did not exercise a wise discretion in making the order, in the circumstances of the case.

*Held.*—As the words "sufficient grounds" occur in a Clause which is independent of the Clause relating to "formal defects", there is nothing in Section 357 C. P. C., to show that the natural meaning of the words "sufficient grounds" is intended to be restricted by the words *"formal defects"*, in the preceding Clause. Therefore, the grounds that are deemed sufficient for granting an application for leave to withdraw from the suit, need not be analogous to the "formal defects" mentioned in Clause (*a*).

Interpretation *ejusdem generis* should be resorted to only when the provisions of an enactment are not clear.

The Section requires proof of sufficient grounds before leave to withdraw can be given. Sufficient grounds cannot certainly mean any ground. In determining whether there are sufficient grounds for giving permission to withdraw from the suit, the nature of the grounds alleged and the stage at which the application was made have to be considered. The apprehension that the counter-petitioner may lose his appeal in the Appellate Court would not be a sufficient ground for allowing him to withdraw from the suit.

When a suit has been finally tried on the merits, even the trial Court ought to be very slow in allowing it to be withdrawn with liberty to institute a fresh suit and an Appellate Court should rarely if at all accord such permission.

Section 357 (*b*) requires the plaintiff who applies for permission to withdraw from a suit, to satisfy the Court that there are sufficient grounds for permitting him to withdraw therefrom. The permission is not to be given as a matter of course. The Court ought to make a serious enquiry as to whether there exist sufficient grounds for giving leave to the plaintiff to withdraw from the suit with permission to re-agitate the same matter.— **40 T. L. R.**, *56*
**( = 14 T. L. J.**, *188*).

Ref.—19 T. L. J., 303.

**7.** The provisions of Order XXIII, Rule 1, draw a clear distinction between withdrawal *of suits* and abandonment of part of claim and withdrawals *from suits* and abandonment of claims or part thereof *with liberty to bring fresh suits.*

The permission of the Court referred to in Sub-Rule (2) of Rule 2 has not been made a condition precedent to the granting of the withdrawal of the plaintiff's suit against all or any of the defendants or abandonment of his claim against them. Under Sub-Rule 1, the plaintiff is enabled to do so irrespective of the Court's sanction. It is only in cases where such withdrawal or abandonment is proposed to be made with a reservation to re-agitate the same matter in a subsequent suit that leave of the Court is made essential and Sub-Rule (2) exonerates the cases in which such permission should be granted.

Thus, under Sub-Rule (2) of Rule 1 of Order XXIII, the plaintiff is competent without the leave of the Court to withdraw his suit as against all or any of the defendants or abandon the whole or part of the claim against them. The inconvenience that the defendants concerned, affected by such withdrawal, would be subject to, will have to be taken into account in the order relating to costs.

Even when the matter has been decided in the original Court and the matter is pending in appeal, the Appellate Court has the right to exercise the powers conferred on the original Courts under Rule 1 of Order XXIII. The circumstance that the plaintiff is the respondent in the Appellate Court cannot affect the above right.

Appeals are in essence only continuations of the proceedings in the trial Courts. The appeal must be deemed to be a stage of the suit within the meaning of the Rule, and the plaintiff in the suit allowed to make applications under the various Sub-rules in this Rule. Under Section 85, Clause (2), the Appellate Court is invested with the same powers and declared competent to perform as nearly as may be, the same duties as are conferred or imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein.

It is doubtful whether, in the face of the express provisions of Sub-Rule (3) of Rule 1, a suit can be taken to have terminated *ipso facto* on the presentation of an application for withdrawal now.— **19 T. L. J.,** ***303.***

Ref.—19 T. L. J., 1024.

**8.** Both under Section 357 of the old Code and under Order XXIII, Rule 1, the plaintiff has a right to withdraw his suit with or without a prayer for permission to file a fresh suit upon the same cause of action. There is no warrant for holding that there could be no withdrawal unless coupled with an application to file a fresh suit. The Sections clearly show that the Legislature itself recognised withdrawals by the plaintiff without a prayer for such leave.

An order striking off the suit on an application for withdrawal under Order XXIII, Rule 1 or Section 357 without permission to file a fresh suit cannot be construed as a refusal of the claim made in the plaint and cannot operate as *res judicata* with respect to a subsequent action in which the identical question comes up for determination, by applying the provisions of Explanation V of Section 10. There could not be a hearing and determination of any issue, question or matter within the meaning of Section 10, and the application of the principle of constructive *res judicata* embodied in Explanation V cannot be considered justifiable.

Section 357 or Order XXIII, Rule 1, only provides that withdrawal without leave could operate as a bar to the *same plaintiff* filing a fresh suit upon the identical cause of action.— **19 T. L. J.,** ***673.***

Limitation law not affected by first suit.

2. In any fresh suit instituted on permission granted under the last preceding Rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

Compromise of suit.

3. Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit.

---

**9.** See also—

Sec. 2 (2).— **2 T. L. J.**, *364*.

Or. I, r. 10 (2) & (3).—**2 S. D.**, *237*.

Or. XXIII, r. 3.—**25 T. L. R.**, *1* (=**1 T. L. J.**, *265*).

„ XL, r. 1.—**45 T. L. R.**, *273* (=**19 T. L. J.**, *1024*).

**Or. XXIII, r. 2** [ = S. 358 = *Or. XXIII, r. 2* ]

**Or. XXIII, r. 3** [ = S. 359 = *Or. XXIII, r. 3* ]

I. The corresponding Section of Regulation II of 1065 was as follows :—

"359. *Compromise of suits.*—If a suit be adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfy the plaintiff in respect to the whole or any part of the matter of the suit, such agreement, compromise or satisfaction shall be recorded, and the Court shall pass a decree in accordance therewith so far as it relates to the suit, and such decree shall be final, so far as relates to so much of the subject-matter of the suit as is dealt with by the agreement, compromise or satisfaction."

II. In regard to Rule 3, the Notes on Clauses say :—

"An express provision is made for passing an order to record an adjustment, so that in cases of dispute as to the fact or nature of an adjustment, the matter may be taken in appeal. At present, a 'consent' decree is allowed by judicial decisions to be taken in appeal, if, in fact, there was no consent. An appeal against a 'consent' decree is anomalous."

See Section 76 *Supra.*

III. The Indian Special Committee observed:—"The Committee have considered it expedient to alter the language of Section 375 so as to recognise the powers of a Court to enquire into and to record a disputed compromise."

IV. It is advisable that Courts when drawing up decrees on compromises take care merely to record those provisions of the compromise which have nothing to do with the litigation and to pass a definite clearly worded decree in respect of the questions in dispute (*Per Sadasiva Iyer, C. J.*).— **3 S. D.**, *173*.

**Case Law.**

**1.** The suit was to enforce the terms of a Razinamah filed in a previous suit whereunder the parties therein came to certain terms in respect of certain immovable property (the subject-matter of that litigation) and withdrew from the suit.

*Held*,—(1) As the Razinamah related to the transfer of immovable property and no

decree was passed thereupon, it was inadmissible in evidence unless registered.

[The parties who executed it did not ask the Court to pass a decree on it, but withdrew from the suit and prayed the Court to strike it off its file, so that the Razinamah was allowed to stand as a transaction separate from the decree, giving the parties to it a right to enforce its conditions by a separate suit. The Razinamah ought therefore to have been registered before the present suit was instituted.]

(2) The admission of a document requiring registration but not registered may entitle a party to a decree, though the document be not produced in evidence; but in such cases, the admission must leave nothing to be proved *aliunde* in respect of the material parts of the document.

(3) The suit being based on an executed agreement, the parties could not in appeal be allowed to convert it into an executory contract.— **11 T. L. R.,** ***99.***

**2.** In a suit for recovery of land, the parties agreed to abide by oath, but instead of carrying out the oath agreement, they came to compromise in the presence of the commissioner deputed to see the oath taken. The terms of the agreement of compromise were noted down by the commissioner and the parties signed the paper. This agreement was produced in Court; but no decree was passed on it, the suit having been dismissed. The plaintiff in that suit then sued to enforce the terms of the agreement of compromise.

*Held.*—(1) The agreement relating as it did to immovable property was compulsorily registrable under Section 9 of the Registration Regulation, and being unregistered, was inadmissible in evidence under Section 31 of the same Regulation.

(2) The suit being on a written agreement, could not be treated as one based on a verbal agreement.

The suit was consequently unsustainable. **11 T. L. R.,** ***200.***

**3.** The Legislature appears to have used the words 'recorded' and 'filed' in the Civil Procedure Code. These words appear to mean simply that the papers may be placed on the record. The wording of Section 359 shows that after a petition of compromise is recorded the Court shall pass a decree in terms of it. The use of the expression 'recorded' in this Section seems to show that it does not signify any judicial order giving effect to the compromise. Such order has to follow after the petition is recorded.— **23 T. L. R.,** ***142.***

**4.** When a lawful compromise is effected by the parties, the Court is bound to pass a decree in accordance therewith. Section 359 of the Code is imperative and the Court has no option or discretion in the matter.— **1 S. D.,** ***292.***

Ref.—42 T. L. R., 289 (= 16 T. L. J., 186).

**5.** A prior suit for redemption was brought by the plaintiffs against the defendants, and the parties compromised the case by putting in a *razi petition* which stated, *inter alia,* that the defendants had paid to the plaintiffs a sum of 425 Fanams in ready cash, that for that sum and the prior mortgage amount of 2,000 Fanams, the defendants were to be given a mortgage over the properties and that a new mortgage deed embodying these terms was soon to be executed. In pursuance of the compromise petition, the suit was struck off the file. The new mortgage deed contemplated by the petition was, however, not executed. The plaintiffs on the strength of the compromise petition brought the suit for redemption of the properties. The defendants contended that the suit was premature inasmuch as the compromise petition conferred on them a right to hold for 12 years from the date of the petition.

The District Munsiff dismissed the suit holding that the compromise petition, being unregistered, was inadmissible in evidence, that the plaintiffs having withdrawn the

former suit by the compromise petition, Section 357 [= Or. XXIII, r. 1], para 2, was a bar to the suit, that the compromise petition, according to its correct interpretation, conferred on the defendants a Kuzhikanom right for a period of 12 years and hence the suit was premature.

*Held* (by a Division Bench—Krishnan Nair, C. J., and Hunt, J.).—(1) The compromise petition was not compulsorily registrable as it did not create any right in immovable property, but created only a right to obtain another document which would create a right in immovable property, and as such it fell within Exception 4 to Section 10 of the Registration Regulation.

Again, the provisions of the Registration Regulation do not apply to proper judicial proceedings whether consisting of pleadings filed by parties or orders made by the Court. A compromise petition is a pleading filed by the parties and can be sued on although not registered.

(2) The petition of compromise was not a withdrawal petition, but a compromise petition under Section 359. There was no question of any bar to the present suit by reason of the provisions of Section 357.

(3) The provision in the compromise petition that the defendants would be paid at the time of redemption the value of improvements for the trees that would be planted after the date of the *razi* made it a Kuzhikkanom document and conferred on the defendants a right to hold for 12 years from the date of the compromise petition.—

**25 T. L. R.**, *1*
(=**1 T. L. J.**, *265*).

Rel.—10 T. L. J., 22.
Ref.—32 T. L. R., 245
( =6 T. L. J., 407).
39 T. L. R., 78.
19 T. L. J., 673.

**6.** In a suit for recovery of arrears of salary, the parties filed a compromise petition stating that the suit had been adjusted. Subsequently the plaintiff filed a petition objecting to the passing of a decree on the terms of the compromise stating that he had been deceived by the defendant into signing the compromise petition. The lower Court on receipt of the petition ordered that the case be proceeded with on the merits and eventually gave a decree for plaintiff.

*Held.*—The lower Court was bound to satisfy itself as to whether there had been an adjustment of the suit by a lawful agreement or compromise before calling upon the parties to adduce evidence on the merits of the case. If there had been such adjustment, the Court was bound to pass a decree in accordance therewith as stated in Section 359 of the Civil Procedure Code. The case should have been disposed of on the merits only if no such lawful adjustment was found to have taken place.—

**29 T. L. R.**, *110*
(=**3 T. L. J.**, *418*).

**7.** All terms which form the consideration for the adjustment of the matter in dispute, whether they form part of the subject-matter of the suit or not, do become related to the suit and can be embodied in the decree.

A compromise entered into by a Karanavan in his representative capacity and embodied in a decree is binding on all the members of his Tarwad, except where it is proved to have been obtained by fraud. That what he did was prejudicial to the Tarwad may be a ground for getting the compromise set aside, but is insufficient to warrant the inference that he did not act on behalf of the Tarwad.—

**31 T. L. R.**, *155*
(= **5 T. L. J.**, *336*).

Ref.—14 T. L. J., 488.

**8.** Where the parties to a suit enter into a compromise consisting of terms which partly relate to matters lying outside the scope of the controversy as disclosed by their allegations and counter-allegations, such compromise, if submitted to the Judge

for consideration and incorporation is deemed appropriate in the decree, does not require registration, whether all its terms are so incorporated or whether they are merely referred to in the decree (F. B.).—
**10 T. L. J.**, *22.*

9. A compromise agreement provided (1) that the plaintiff should be entitled to realise from the defendant, the plaint amount with interest thereon at the rate of 9 annas per mensem on Rs. 100 from the date of the plaint, (2) that the plaintiff should have the right to take out execution for the said amount only if the defendant failed to pay it before the 30th Kumbhom 1090 and (3) that should the defendant make default the plaintiff should have the option to realise by execution the plaint amount with interest thereon from the date of plaint at the rate of 12 per cent. per year. The above agreement was set out in the decree which then proceeded to order as follows:—"Decreed as per the above razi."

*Held.*—As the District Judge could not have legally allowed more than the rate in the document under Section 7 of Regulation I of 1010, it cannot be presumed that the Court has really done what it cannot have legally done. It cannot therefore be said that the decree really embodied the alternative provision for the higher rate of interest.— **36 T. L. R.**, *183* (= **10 T. L. J.**, *181*).

Dist.—17 T. L. J., 295.

10. A judgment by consent can operate as *res judicata.* In order that a decree based on a compromise may operate as *res judicata*, the terms of the compromise have to be embodied in the decree or made the basis of such decree.

There is nothing in Section 359, C. P. C., to restrict the relief granted by the compromise to what is prayed for in the plaint. The compromise is binding not only in respect of the property involved in the suit but it is binding and valid with reference to all the properties dealt with in the compromise and the decree which followed it.—
**14 T. L. J.**, *488.*

11. At the hearing of a suit, the parties filed a compromise petition in Court and asked for a decree in terms of the compromise. The Court, in decreeing the suit accordingly made a modification by cutting down the future interest to six per cent. per annum instead of allowing it at twelve per cent. as agreed to in the petition of compromise. On an appeal preferred by the plaintiff against this portion of the decree:

*Held.*—The decree of the lower Court in so far as it was objected to could not be supported.

Under Section 359, the Court has (in a case like this) first of all to enquire whether the suit is adjusted in whole or in part by any lawful agreement or compromise. If it finds that the whole suit or a portion thereof has not been adjusted by a lawful agreement or compromise, it would be the Court's duty to refuse to proceed upon the compromise petition. But if it finds that the agreement or compromise set up is lawful, the Court is bound under the Section to record the agreement or compromise and pass a decree thereon, in so far as it relates to the suit. To that extent the Section is peremptory, and leaves no discretion to the Court.

After accepting the compromise as a lawful adjustment of the suit in whole or in part, it is not open to the Court to introduce into the decree that is passed thereon modifications based on its own view of the justice of the case. To permit the Court to do so would be virtually to force upon the parties a new arrangement made by the Court in substitution for the one that the parties have entered into for themselves, and for this there is no justification either on principle or on the terms in which the Section is enacted.

Probably the rate of future interest was interfered with under the impression that the Court was at liberty to reduce it by virtue of the discretion vested in it under Section 204 of the Code [new Section 31]. But the language of Section 359 lends no countenance to the view that it should be read subject to Section 204. Such a view would also defeat the object which the Legislature had in view in enacting the Section, which was to enable parties to adjust their own differences without the help of the Court, subject to certain safeguards which the Legislature had enacted in the Section itself. Subject to such safeguards, the Section makes the agreement of the parties decisive as regards the terms on which the decree should be passed, and no interference by the Court with the agreement is contemplated.—

**42 T. L. R.**, *289*
(= **16 T. L. J.**, *186*).

Ref.—17 T. L. J., 295.

**12.** A compromise decree provided that the defendant should pay the plaintiff on or before 30-1-1100, Fs. 530 with interest at 12 per cent. from date of plaint, failing which the plaintiff was to have the right to realise in execution the plaint amount with interest and costs. The defendant did not make the payment on or before 30-1-1100 ; but on 31-1-1100 deposited in Court Fs. 530 without the stipulated interest. The plaintiff thereupon applied in execution for the recovery of the plaint amount as per the terms of the compromise decree. It was contended for the defendant that the alternative provision in the compromise decree was by way of penalty and should be relieved against.

*Held.*—In execution of the decree, the Court had no jurisdiction to relieve against the provisions of the decree and the decree-holder was entitled to the larger sum mentioned in the decree and to realise it in execution.

No Court has power to change the terms of a compromise and introduce into the decree modifications based on its own view of the justice of the case. Much less has the Court power to vary the terms of the agreement between the parties after the same has been accepted by the Court and made the basis of the decree.—

**17 T. L. J.**, *295*.

Ref.—19 T. L. J., 726.
Rel.—19 T. L. J., 752.

**13.** The appeals preferred were against the orders of the lower Court in two applications under the Guardians and Wards Regulation.

The contention of the appellant, based on Section 105, that when the parties filed the compromise petition, the Court was bound to accept it and pass an order in accordance with it was unsustainable.

The lower Court was right in not accepting the compromise petition blindly and in considering for itself whether it contained, taken as a whole, the best arrangement that could be made for the management of the minor's affairs. No doubt proceedings under the Guardian and Wards Regulation are among those to which the Civil Procedure Code is made applicable by Section 105 of the Code. But that does not mean that every provision in the Code is, without any discrimination, to be applied to them. The Section itself provides a safeguard in the qualification "as far as it can be made applicable". Whenever any particular provision is sought to be applied, it will have to be determined whether, having regard to the nature of the proceedings, it is a provision that can with advantage be applied. If the provision, for instance, would be inconsistent with the nature and purpose of the proceedings, then certainly it is not intended to apply to them and the Courts are bound to refuse to apply it. The proceedings under the Guardian and Wards Regulation, at whosesoever instance they may be started, are intended to secure the interests of the minor. The other persons who may figure as petitioners or counter-petitioners

in the proceedings have no interest in them apart from the minor's interest. In other words, those proceedings have not for any part of their object the adjudication of any private rights of such parties. There is no occasion therefore for the parties to those proceedings to adjust their disputes, relieve the Court of its duty to adjudicate upon them and call upon it merely to record such adjustment. The analogy of a compromise of their disputes by the parties to a suit breaks down when applied to proceedings under the Guardian and Wards Regulation. It is the Court's duty to make proper arrangements for the conduct of the affairs of the minor, and that duty it cannot abdicate or delegate to others. A compromise may be dealt with as an arrangement suggested by the parties, as, in their opinion, fitted to serve the interests of the minors best. The Court may consider it and if it finds that that is the best arrangement that can be made in the interests of the minor, it may adopt the arrangement and pass an order accordingly.

(2) The contention of the appellant that the Court should either have accepted or rejected the compromise petition *in toto* had to prevail. The Court may, independently of the compromise, arrive at some of the arrangements agreed to by the parties to the compromise. But it cannot accept the compromise as such in part and repudiate the rest of it. In other words, the Court, if it found the compromise as such not acceptable in the interests of the minor, should have ignored it and proceeded upon its enquiry into the matter, as if no such compromise had come to its notice and passed its orders on the result of that enquiry.—

**18 T. L. J.**, *359*.

**14.** Under Order XXIII, Rule 3, the Court has to enquire whether an agreement of compromise sought to be recorded is lawful and whether the same has, as a matter of fact, been consented to by the parties. If the compromise has been found to have been lawfully entered into by them, the Court will have to record the compromise, and pass a decree in terms thereof. In recording the compromise, the Court has necessarily to enquire into the question whether the same has been entered into by the parties, and no adjustment could be permitted without the determination of the question.

Where the parties are at issue as regards certain terms of the adjustment, though the adjustment itself is admitted, the Court cannot strike off the suit and direct the terms on which the parties are at dispute to be made the subject-matter of a separate suit.

A striking off of the suit under Section 359 (old) and under Order XXIII, Rule 3, would be permissible only after a decision of the question of the nature of the adjustment upon which the parties are at issue.

Section 43 of Regulation II of 1065 applies to joinder of causes of action in the plaint and not cases of this nature.—

**19 T. L. J.**, *608*.

[Section 43 has been omitted in the new Code. For the Section, see under Order II, Rule 7].

**15.** See also—

Part II, General.— **3 T. L. J.**, *348*.
**30 T. L. R.**, *7*.
**35 T. L. R.**, *257*.
(= **9 T. L. J.**, *311*).
Sec. 88.— **19 T. L. J.**, *643*.
„ 109.— **18 T. L. J.**, *1276*.
Or. I, r. 8.— **16 T. L. J.**, *501*.

Settlement by oath.

4. If the parties agree to have the suit or any part of it decided by an oath taken by one of them in Court or elsewhere and tender a written agreement signed by both of them setting forth the terms of the oath and the place where it is to be taken, the Court may accept such agreement. After the oath has been taken in the manner proposed, the Court shall decide the case in terms of the agreement. After the agreement has been accepted by the Court, it shall not be competent to any of the parties to withdraw therefrom without the leave of the Court. If any party withdraws or refuses to take the oath without lawful excuse, the Court may decide the case against him or pass such other order as it deems proper.

---

**Or. XXIII, r. 4** [ = S. 360 = ,, ]

This Rule has no counterpart in the British Indian Code, and it reproduces Section 360 of Regulation II of 1065. The Statement of Objects and Reasons appended to the 1065 Bill explained the necessity for the provision thus:—"As there is no law in Travancore, as in British India, specially providing for disposal of suits by oaths of the parties (see Indian Oaths' Act), it is thought desirable to make the necessary provision by adding a Section. The Section, as drafted, is strictly in conformity with the existing practice of the Courts founded upon the Regulations of 1010."—

*S. O & R., Para 56.*

**Case Law.**

1. Where the respondent was willing to give due effect to the oath agreement, but the interference of third parties had prevented him from doing so, and neither was apparently at fault, the parties should be given another opportunity to carry out the agreement. In the case, the lower Court was directed to see that it is duly carried out by issuing a fresh summons for the purpose at the expense of both parties.—

**13 T. L. R., *140.***

2. A compromise decree made on the basis of an oath under Section 360, C. P. C., has the effect of *res judicata*.—

**19 T. L. R., *988.***

Fol.—12 T. L. R., 32
(= 6 T. L. J., 126).
K. P., 453.
3 S. D., 226.

3. The suit which was on a pro-note was defended on behalf of the defendant by a Muktear who was empowered under the deed to sue for and recover moneys due to his principal. He and plaintiff agreed to a settlement by oath which, however, did no take place, as the day first fixed was found to be unsuitable, and as afterwards the second Muktear took exception to the first Muktear's power to enter into oath agreement. The lower Court went into the merits of the case and dismissed the suit.

It was argued in appeal that the first Muktear had power, and the lower Court should have dealt with the case under Section 360, C. P. C.

A Muktear has no authority to enter into an oath agreement on behalf of his principal, if the deed does not expressly authorise the agent to enter into compromises or oath agreements. Under Section 188 of the Contract Act, the power of an agent who has authority to do an act is limited to the doing of every lawful thing which is necessary to do such act. It cannot be said with any reason that entering into an agreement for oath was necessary for carrying out the power given to the agent to sue for and recovering moneys due, to his principal.— **2 S. D., *199.***

5. Nothing in this Order shall apply to any proceedings in execution of a decree or order.

Proceedings in execution of decrees not affected.

---

4. The parties filed an oath agreement before the lower Appellate Court to settle the matters in dispute between them by oath to be taken by the plaintiff and to be seen by the defendant. The agreement contained a clause to the effect that in case the oath fell through owing to the default of neither party, they would go for the oath a second time. The oath fell through owing to no default of either party. The Court took a statement from the Vakils on both sides to the effect that they had no objection to the Court's disposing of the case on the merits.

*Held.*—As the Vakils had no special authorization to give such a statement, in derogation of the provision for a repetition of the oath contained in the agreement of the parties themselves, the oath should be administered a second time.

It was clear that the parties have not *withdrawn* from, or refused to perform the oath agreement, in which case alone, the Court has the power to decide the case against him or pass such order as it deems fit under Section 360. It would be against public policy to allow solemn agreements for oath to be lightly set aside for no reason whatever. The policy of Section 360 and the spirit of the ruling in 1 T. L. R., 110 clearly require the Court to insist on the parties acting up to such agreements.—

**3 S. D.,** ***11.***

5. Where the parties, who had entered into an oath-agreement withdrew from it as it was not carried out through no fault of theirs and the Munsiff thereupon decided the case on the merits:

*Held.*—It is a question of fact in each case whether the date fixed for the taking of oath is of the essence of the agreement but the grant of permission by the Court in the case to the parties to withdraw put an end to such agreement even if it existed after the expiry of such date.—**K. P.,** ***222.***

6. The petitioner not having been proved to have withdrawn from the oath agreement without lawful excuse, the lower Court must re-try the case on evidence.— **K. P.,** ***223.***

7. Where the plaintiff who had agreed to be bound by the defendant's oath in a church, refused to see the oath taken, on the ground that the congregation had dispersed and defendant did not take the oath, the lower Court passed an order for the trial of the case on the merits holding that plaintiff was right in his refusal.

*Held.*—The High Court in revision should not interfere with the exercise of the lower Court's discretion. Section 360, C. P. C., does not make it obligatory to decide the case against the withdrawing party.—

**K. P.,** ***224.***

8. Where the parties to an oath-agreement did not mean by the words in dispute the same thing and the Munsiff on defendant's default gave judgment for plaintiff:

*Held.*—As there was no binding agreement, the Munsiff must re-try the case.—

**K. P.,** ***267.***

9. Under Section 360 of the Civil Procedure Code, it is not competent for any of the parties to an oath-agreement, after an oath-agreement has been accepted by the Court, to withdraw therefrom without the leave of the Court. The Court is bound to exercise its judicial mind as to the validity and sufficiency or otherwise of the grounds on which permission to withdraw is sought before refusing such permission.—

**11 T. L. J.,** ***282.***

## ORDER XXIV.

### Payment into Court.

Deposit by defendant of amount in satisfaction of claim.

1. The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

Notice of deposit.

2. Notice of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

Interest on deposit not allowed to plaintiff after notice.

3. No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited is in full satisfaction of the claim or falls short thereof.

---

**10.** See also—

Sec. 10.—**32 T. L. R.,** *32* (= **6 T. L. J.,** *126*).
**8 T. L. J.,** *120*.

**Or. XXIII, r. 5** [= „ =*Or. XXIII, r. 4*]

This Rule reproduces the corresponding Rule in the British Indian Code, which itself was an adaptation of Section 375-A of an earlier Code.

**Or. XXIV, r. 1** [=S. 361=*Or. XXIV, r. 1* = En. Or. 22, r. 1]

I. See Rules 3 and 4 for the advantage to the defendant by such payment, in respect of interest and costs.

II. Rule 1 of Order XXII of the Rules of the Supreme Court, 1883, as amended, is as follows:—"1. Where any action is brought to recover a debt or damages, or in an Admiralty action, any defendant may, before or at the time of delivering his defence, or at any later time by leave of the Court or a Judge, pay into Court a sum of money by way of satisfaction, which shall be taken to admit the claim or cause of action in respect of which the payment is made: or he may, with a defence denying liability, (except in actions or counter-claims for libel or slander) pay money into Court which shall be subject to the provisions of Rule 6: Provided that in an action on a bond under the Statute 8 & 9 Will. III, c. 11, payment into Court shall be admissible to particular breaches only, and not to the whole action."

[Rule 6 referred to provides for 'Payment into Court with denial of liability.']

**Or. XXIV, r. 2** [=S. 362=*Or. XXIV, r. 2*]

I. In the old Section 362, the words "in writing" occurred after the word "notice." It may be noted that Section 106 of the present Regulation requires all notices given under the Code to be in writing.

II. For Form of Notice of payment into Court, see Appendix I, Form No. 3.

**Case Law.**

See—

Or. XXI, r. 1.—**12 T. L. J.,** *82*.
„ r. 44.—**18 T. L. R.,** *249*.

**Or. XXIV, r. 3** [=S. 363=*Or. XXIV, r. 3*]

Procedure where plaintiff accepts deposit as satisfaction in part.

4. (1) Where the plaintiff accepts such amount as satisfaction in part only of his claim, he may prosecute his suit for the balance; and, if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff shall pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

Procedure where he accepts it as satisfaction in full.

(2) Where the plaintiff accepts such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pronounce judgment accordingly; and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

*Illustrations.*

(*a*) A owes B Rs. 100. B sues A for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court. B accepts it in full satisfaction of his claim but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(*b*) B sues A under the circumstances mentioned in illustration (*a*). On the plaint being filed, A disputes the claim. Afterwards A pays the money into Court. B accepts it in full satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary.

(*c*) A owes B Rs. 100, and is willing to pay him that sum without suit. B claims Rs. 150 and sues A for that amount. On the plaint being filed A pays Rs. 100 into Court and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

---

**Case Law.**

As the defendant did not give notice to the plaintiff, as required by Section 362 [Rule 2], plaintiff was held entitled to the interest on principal till the date when the amount deposited was drawn by plaintiff.—**13 T. L. J., *22*.**

---

**Or. XXIV, r. 4** [=S. 364=*Or. XXIV, r. 4*]

---

## ORDER XXV.

### Security for Costs.

When security for costs may be required from plaintiff.

1. (1) Where, at any stage of a suit, it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of Travancore, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immovable property within Travancore other than the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

Residence out of Travancore.

(2) Whoever leaves Travancore under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of Travancore within the meaning of Sub-rule (1).

---

**Or XXV, r. 1** (1) [=S. 365=*Or. XXV, r. 1*]
" r. 1 (2) [=S. 367=*Or. XXV, r. 2*]

I. Section 365 of the old Regulation which corresponds to Sub-Rule (1) of Rule 1 was as follows :—

"365. *When security for costs may be required from plaintiff at any stage of suit.* —If, at the institution or at any subsequent stage of a suit, it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of Travancore, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immovable property within Travancore independent of the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time to be fixed by the order, to give security for the payment of all costs incurred and likely to be incurred by any defendant."

II. Sub-Rule (2) is the same as Section 367 of the old Regulation.

III. In the British Indian Code, there is also the following Sub-Rule :—"(3) On the application of any defendant in a suit for the payment of money, in which the plaintiff is a woman, the Court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immovable property within British India."

A provision similar to the above was inserted in the original Bill ; and the Notes on Clauses said :—

"This is a new provision enabling the trial Court to get security for costs in the case of a female plaintiff, when she is not possessed of sufficient immovable properties in Travancore. As a woman is exempt from arrest, such a provision is desirable."

The Select Committee deleted this Sub-Rule.

IV. The object of the Rule is to provide for the protection of defendants in cases where, in the event of success, they may have difficulty in realising their costs from

Effect of failure to urnish security.

2. (1) In the event of such security not being furnished within the time fixed, the Court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw therefrom.

(2) Where a suit is dismissed under this Rule, the plaintiff may apply for an order to set the dismissal aside, and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the Court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(3) The dismissal shall not be set aside unless notice of such application has been served on the defendant.

---

the plaintiffs. The power of the Court under this Rule to order security for costs is discretionary.

V. For other cases in which security for costs may be required, see Order XXII, Rule 8 and Order XL, Rules 5, 6 and 10.

**Case Law.**

See—

Or. XXII, r. 8.—**15 T. L. R.**, *178.*

**17 T. L. R. App.**, *20.*

**Or. XXV, r. 2** [=S. 366=*Or. XXV, r. 2*]

I. "The existing provision that an application under the corresponding Section should be made within 30 days of the dismissal is omitted. The time so allowed is far too short to afford any relief, and the omission of such provision would give an applicant three years' time to make his application."— *Notes on Clauses*,

II. 1. The first paragraph of the old Section corresponding to Sub-Rule (1) was:—"In the event of such security......within the time so fixed, the Court shall dismiss the suit......to withdraw therefrom under the provisions of Section 357." [Section 357=Or. XXIII, r. 1.]

2. In Sub-Rule (2) corresponding to the second Paragraph of Section 366, the word "security" before the words "costs or otherwise," is an addition.

3. The third Paragraph of the old Section 366 was as follows:—"The dismissal shall not be set aside unless the plaintiff has served the defendant with notice in writing of his application."

4. Section 366 had also the following last Paragraph:—

"The provisions of this Code and of the Limitation Regulation with respect to an application for an order under Section 98, shall, so far as they can be made applicable, apply to an application for an order and to an order for setting aside a dismissal under this Section."

[Section 98 = Or. IX, r. 9.]

**Case Law.**

No appeal lies against the order refusing to take security from the plaintiff for costs.

**5 T. L. R. App.**, 9.

## ORDER XXVI.

### Commissions.

*Commissions to examine witnesses.*

Cases in which Court may issue commission to examine witness.

1. Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it.

Order for commission.

2. An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

Where witness resides within Court's jurisdiction.

3 A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute it.

Persons for whose examination commission may issue.

4. (1) Any Court may in any suit issue a commission for the examination of—

(*a*) any person resident beyond the local limits of its jurisdiction ;

---

**Or. XXVI, r. 1** [=S. 368=*Or. XXVI, r. 1*]

I. See Section 61 Supra regarding the power of Court to issue commissions.

II. See Section 97 regarding exemption of certain women from personal appearance in Court.

---

**Or. XXVI, r. 2** [=S. 369=*Or. XXVI, r. 2*]

**Case Law.**

Parties to suits, even though they are Gosha women, Antharjanams of a respectable family, should give evidence before the commissioner, and cannot be excused from attendance before him as witnesses. The commissioner should, however, conduct the examination in such a way as to respect their Gosha, such as allowing them to sit behind a purdah, and answer questions, &c., the commissioner taking measures to satisfy himself of the identification of the examinees.— **1 S. D., 548.**

---

**Or. XXVI, r. 3** [=S. 370=*Or. XXVI, r. 3*]

---

**Or. XXVI, r. 4** [=S. 371=*Or. XXVI, r. 4*]

I. Para 2 of Section 371 of Regulation II of 1065, corresponding to Sub-rule (2) of Rule 4 did not contain the words "or to

(*b*) any person who is about to leave such limits before the date on which he is required to be examined in Court ; and

(*c*) any civil or military officer of the Government who cannot, in the opinion of the Court, attend without detriment to the public service.

(2) Such commission may be issued to any Court, not being the High Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.

(3) The Court on issuing any commission under this Rule shall direct whether the commission shall be returned to itself or to any subordinate Court.

Commission or request to examine witness not within Travancore.

5. Where any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within Travancore is satisfied that the evidence of such person is necessary the Court may issue such commission or a letter of request.

---

any pleader or other person.........may appoint". These words were in the Indian Code of 1882.

II. For Form of commission to examine absent witness, see Appendix I, Form No 7.

**Case Law.**

(1) The examination on commission under Order XXVI, Rule 4, may be by interrogatories or otherwise. The issue of a commission for the examination of a witness living beyond the limits fixed by law is a matter of right and not within the discretion of the Court. The word "may" occurring in the Section means "is given authority to." The examination by commission under Rule 4 would necessarily be in one of the forms recognised by law and an indication of how such examination should be conducted is contained in Rule 1. It is improper to construe the examination contemplated in Rule 4 as restricting to the mode thereof in the absence of words in the Rule itself warranting such a restriction.

Examination of witnesses on commission may be on open commission as the party may desire. Even if interrogatories are filed, cross-interrogatories will have to be called for and in the light of the same supplementary interrogatories will have to be required to be filed moving for the examination of the witness concerned. The Court may, in appropriate cases, supplement the examination by allowing the witness to be asked further questions by the parties or their pleaders treating the examination as open commission to that extent. These matters have to be decided by the Court and the wishes of the parties in the matter could not be interfered with by the Court unless the grant of the application is considered to result in an abuse of the process of the Court.

6. Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

Court to examine witness pursuant to commission.

7. Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case, the commission shall be returned in terms of such order; and the commission and the return thereto and the evidence taken under it shall (subject to the provisions of the next following Rule) form part of the record of the suit.

Return of commission with depositions of witnesses.

8. Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless—

When depositions may be read in evidence.

(a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or is a civil or military officer of the Government who cannot, in the opinion of the Court, attend without detriment to the public service, or

---

(2) The rule prohibiting the review of an order passed on review cannot apply to interlocutory orders.— 19 T. L. J., *1324*.

**Or. XXVI, r. 5** [ = S. 372 = *Or. XXVI, r. 5* ]

I. The words "or a letter of request" are an addition to the provision in the old Section.

See Section 62, *Supra*.

II. For Form of letter of request, see Appendix I, Form No. 8.

**Or. XXVI, r. 6** [ = S. 373 = *Or. XXVI, r. 6* ]

The corresponding Section of the old Regulation did not contain the words "or cause him to be examined."

**Or. XXVI, r. 7** [ = S. 374 = *Or. XXVI, r 7* ]

**Or. XXVI, r. 8** [ = S. 375 = *Or. XXVI, r. 8* ]

(b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a), and authorises the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

*Commissions for local investigations.*

Commissions to make local investigations.

9. In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit, directing him to make such investigation and to report thereon to the Court :

Provided that, where the Government have made Rules as to the persons to whom such commission shall be issued, the Court shall be bound by such Rules.

---

In Clause (a) of Section 375 of Regulation II of 1065, the words "or is a civil or military officer.........to the public service" did not occur.

Or. XXVI, r. 9 [= S. 377 = Or. XXVI, r. 9]

I. In the corresponding Section of Regulation II of 1065, the words "or proceeding" occurred after the words "In any suit" at the beginning of the Section: and the words "and the same cannot be conveniently conducted by the Judge in person;" occurred after the words "annual net profits." Those words have been deleted in the amending provision on grounds of expediency.— **17 T. L. J., *345*.**

See Section 105 *Supra.*

II. The Proviso is new.

III. See Rule 17 of Order XVIII regarding the power of a Judge to make a local investigation.

IV. For Form of Commission for local investigation, see Appendix I, Form No. 9.

**Case Law.**

1. The Zillah Judge was wrong in law in rejecting as inadmissible the report of the commissioner deputed to make a local enquiry. In such cases, the report of a competent and trustworthy commissioner, embodying the result of his local investigation would, ordinarily, be the best material from which the questions as to the amount of pattom, &c., of a land, can be satisfactorily determined by a Court acquainted with local usage and customs.— **3 T. L. R., *4*.**

2. The report of a commissioner is not in itself legal evidence. It must, as other documents, be proved by independent evidence.— **3 T. L. R., *27*.**

3. The Civil Procedure Code does not recognise Thadasthars. Their duty is simply to assist the commissioner appointed by

the Court to value properties, and neither the Court nor the commissioner is bound to accept their opinions.— **14 T. L. R.**, *93.*

**4.** An order to issue a fresh commission is only an interlocutory order, and so no appeal lies against it.— **2 S. D.**, *69.*

**5.** A party's mere asking for the issue of another commission, without any attempt to show any flaw in the report already submitted, would not justify the Court in protracting the case by issuing another commission.— **2 S. D.**, *135.*

**6.** When a commissioner appointed for a local investigation makes a report it is not competent for a Court, unless it annuls the proceedings of the first enquiry to depute a second commissioner for the same purpose. "Ordinarily when the report of a commissioner is objected to, the Court should hear the objections in open Court and decide with the aid of such evidence as it may take whether valuation should be varied and if so in what direction. There may be cases in which the commissioner had so totally misconceived duties so as to render his report and valuation useless as a basis for a decision. In such cases, no doubt a new commissioner may be appointed. This would mean that the old report and valuation were superseded. But to regard the reports and valuation of the three commissioners as available data from which the option of the District Munsiff to choose any one of them is to be exercised is opposed to every principle governing Courts in such matters. It means that the Court abdicates its function of deciding the matter on hearing the objection and reserves to itself the privilege of selecting one of the reports as its decision. It certainly encourages a haphazard and careless selection of commissioners. It subjects parties to unnecessary and avoidable expense and encumbers the records with useless papers. * The filing of objections to a report is no ground for appointing another commissioner, and in all cases where a second commissioner is appointed to do the same work, the reason for adapting such a course must be recorded in writing to enable the appellate Court to see whether the judicial discretion has been properly exercised." (45 Mad., 79). The issue of fresh commissions without recording the reasons for the same, as pointed out above, must be characterised as illegal.— **42 T. L. R.**, *429* (**=16 T. L. J.**, *288*).

**7.** Article 153 of the Civil Courts Guide does not prohibit the disposal of objections to commissioner's report along with other matters involved in the suit or appeal by its final judgment in appropriate cases.— **17 T. L. J.**, *688.*

**8.** The plaintiff whose application for the issue of a commission to assess the waste committed by the mortgagee on the property had been rejected on his failure to deposit the commissioner's batta, is not estopped from making any further application for the same purpose. Every application of the kind has to be granted or rejected on its own merits, and there is no estoppel arising from the dismissal of a prior application of a similar nature.— **43 T. L. R.**, *28.*

**9.** Though it was conceded by either side that inspection was held by the Munsiff on some date, there was nothing on record to show that any inspection was held nor any notes of inspection recorded by the Munsiff.

*Held.*—Considering the slips and mistakes that are liable to be committed during the inspection by incomplete observation or other similar defects which could not be pointed out to the presiding Officer conducting such inspection in the absence of a record made by him, the commitment to writing of whatever facts noticed by him during the visit is imperative and should be insisted on.

The object of local investigation that could be made by the presiding Officer is for understanding the evidence adduced

Procedure of Commissioner.

10. (1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence together with his report in writing signed by him to the Court.

Report and depositions to be evidence in suit.

Commissioner may be examined in person.

(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

*Commissions to examine accounts.*

Commission to examine or adjust accounts.

11. In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

---

before the Court and not for being used as the foundation of the judgment. A judgment based purely upon the result of local investigation will ordinarily be unsupportable and will have to be set aside.—

**43 T. L. R.,** *317.*

**10.** See also—

Or. XVII, r. 3.—**23 T. L. R.,** *232.*

Or. XXVI, r. 18.—**17 T. L. J.,** *345.*

**Or. XXVI, r. 10** [= S. 378
= *Or. XXVI, r. 10*]

I. **1.** In Section 378 of Regulation II of 1065, the words "signed with his name" occur in place of the words "signed by him" in Sub-rule (1).

**2.** In Sub-Rule (2), the words "or as to his report" are an addition.

**3.** Sub-rule (3) is new.

**Case Law.**

See under previous Rule.

**Or. XXVI, r. 11** [= S. 379
= *Or. XXVI, r. 11*]

For Form of Commission to examine accounts, see Appendix I, Form No. 9.

12. (1) The Court shall furnish the Commissioner with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or, also report his own opinion on the point referred for his examination.

Court to give Commissioner necessary instructions.

(2) The proceedings and report (if any) of the Commissioner shall be evidence in the suit, but where the Court has reason to be dissatisfied with them, it may direct such further inquiry as it shall think fit.

Proceedings and report to be evidence.

Court may direct further inquiry.

*Commissions to make partitions.*

13. Where a preliminary decree for partition has been passed the Court may, in any case not provided for by Section 46, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

Commission to make partition of immovable property.

14. (1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorised thereto by the said order, award sums to be paid for the purpose of equalising the value of the shares.

Procedure of Commissioner.

---

Or. XXVI, r. 12 [=S. 380 = *Or. XXVI, r. 12*]

1. In place of the words "such instructions," the corresponding Section of Regulation II of 1065 had the words "such detailed instructions".

2. The Para corresponding to Sub-Rule (2) was as follows:

*Court to receive commissioner's proceedings or direct further inquiry.*—The proceedings of the commissioner shall be received in evidence in the suit, unless the Court has reason to be dissatisfied with them, in which case the Court shall direct such further inquiry as is requisite."

Or. XXVI, r. 13 [=S. 381, Para 1 =*Or. XXVI, r. 13*]

I. The first Para of Section 381 of Regulation II of 1065 was as follows:—

"381. *Commission to make partition of non-revenue paying immovable property.*—In any suit in which the partition of immovable property appears to the Court to be necessary, the Court, after ascertaining the several parties interested in such property and their several rights therein, may issue a commission to such persons as it thinks fit to make a partition according to such rights."

II. The material change is in the use of the word "person" for "persons" as in the

(2) The Commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.

(3) Where the Court confirms or varies the report or reports, it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.

(4) Where it appears to the Court that the property cannot conveniently be divided, the Court may, if it thinks fit, pass a decree for the sale of the property and for the distribution of the proceeds among the parties according to their respective rights in the property.

---

British Indian Code. A commission may now be issued to a single commissioner.

III. For Form of Commission to make partition, see Appendix I, Form No. 10.

**Case Law.**

See under next Rule.

**Or. XXVI, r. 14** [=S. 381, Paras 2-4 =*Or. XXVI. r. 14*]

I. Paras 2 and 3 of Section 381 of the old Regulation, which correspond to Sub-Rules (1) to (3) were as follow:—

*Procedure of commissioners.*—The commissioners shall ascertain and inspect the property, and shall divide the same into as many shares as may be directed by the order under which the commission issues, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

The commissioners shall then prepare and sign a report, or (if they cannot agree) separate reports, appointing the share of each party, and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall either quash the same and issue a new commission, or (where the commissioners agree in their report) pass a decree in accordance therewith."

Under the old Section, the Court must either accept or reject *in toto* the report of the commissioner. It had no power to modify the report.

II. Sub-Rule (4) does not find a place in the British Indian Code. It corresponds to Para 4 of the old Section 381. The old Para was as follows:—

"If it appears to the Court that the property, by reason of its nature or of the number of the parties interested therein, or of any other circumstance, cannot conveniently be divided, the Court may, if it thinks fit, on the request of any of the parties interested and notwithstanding the dissent of any others of them, pass a decree for the sale of the property and for the distribution of the proceeds among the parties according to their respective rights in the property."

In the Statement of Objects and Reasons appended to the Bill which became Regulation II of 1065, it was stated that the "Clause was found necessary in regard to the peculiar tenures of landed property in this country."— *S. O & R., Para 58.*

### Case Law.

1. The proceedings contemplated in Section 381 of the Civil Procedure Code are proceedings in a suit before the passing of the decree in order to enable the Court in that suit to determine exactly the terms of that decree.

Where, in execution of a decree for partition of immovable properties, the District Judge ordered their sale and the division of the sale proceeds on account of the inconvenience that would be caused by the division of the properties themselves:

*Held.*—The objection regarding the inconvenience should have been taken before the passing of the decree. The District Judge was wrong in ordering the sale of the properties. A partition should be made according to the terms of the decree.—
**15 T. L. R.,** *73.*

Diss.—15 T. L. J., 518.

2. Notice calling for objections to a commissioner's report about partition of immovable properties under Section 381 should be personally served on the opposite party.

The alienations made by parties since the partition by the commissioner and prior to the confirmation of the commissioner's report are alienations *pendente lite* and are subject to the decree or order to be eventually passed.— **16 T. L. R.,** *29.*

3. An order to issue a fresh commission is only an interlocutory order, and no appeal lies against it.— **2 S. D.,** *69.*

4. In partition suits, the first decree is only a preliminary decree, and the final decree is the decree passed under Section 381, Para 4, of the C. P. C.—
**1 T. L. J.,** *249.*

Ref.— 11 T. L. J., 24.
Not Fol.—18 T. L. J., 515.

5. Where two commissioners were appointed by the Court to make a partition of properties, and, on the death of one of the commissioners, the survivor effected the partition and submitted a report.

*Held.*—One of the commissioners was by himself incompetent to proceed with the execution of the order issued to two, and therefore, the report made by one alone of the commissioners after the death of the other was invalid and could not be acted upon.— **3 T. L. J.,** *73.*

6. The question whether it is inconvenient to divide the joint family property by metes and bounds can be ascertained only when proceedings are taken for partition of the property under Section 381, C. P. C. If the Court should then find that it is inconvenient to divide the property, it should proceed as directed in the last paragraph of Section 381.— **15 T. L. J.,** *306.*

7. The house, the subject-matter of dispute in the appeal was directed by a decree for partition to be sold, and the proceeds to be distributed among the parties according to their shares. It was under Section 381 that the Court directed the sale. Section 307-A [ = Or. XXI, r. 86 ] did not apply to the case.

*General provisions.*

Expenses of Commission to be paid into Court.

15. Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued

Powers of Commissioners.

16. Any Commissioner appointed under this Order may, unless otherwise directed by the order of appointment,—

(*a*) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him ;

(*b*) call for and examine documents and other things relevant to the subject of inquiry ;

(*c*) at any reasonable time enter upon or into any land or building mentioned in the order.

Attendance and examination of witnesses before Commissioner.

17. (1) The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Order, whether the commission in execution of which they are so required has been issued by a Court situate within or by a Court situate beyond the limits of Travancore, and for the purposes of this Rule the Commissioner shall be deemed to be a Civil Court.

---

It is therefore as part of the preliminary decree for partition that the house was sold, and not in execution of an ordinary decree for money. Proceedings under Section 381, for effecting a partition are proceedings in the suit itself and not proceedings in execution of a decree.

An application for the appointment of a commissioner under Section 381 is not a matter coming within the scope of Section 238 [new Section 40], and no appeal lay from an order on such an application.—
**16 T. L. J.**, *1267*.

8. See also—
Sec. 41.—**11 T. L. J.**, *24*.
,, 105.—**15 T. L. J.**, *518*.
Or. XXII, r. 10.—**13 T. L. J.**, *5*.

Or. XXVI, r. 15 [= S. 382
= *Or. XXVI, r. 15*]

Or. XXVI, r. 16 [=S. 383
= *Or. XXVI, r. 16*]

Or. XXVI, r. 17 [= S. 384
= *Or. XXVI, r. 17*]

(2) A Commissioner may apply to any Court (not being the High Court) within the local limits of whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such Court may, in its discretion, issue such process as it considers reasonable and proper.

(3) When the Commissioner is not a judge of a Civil Court, he shall not be competent to impose penalties; but such penalties may be imposed on the application of such Commissioner by the Court which issued the commission.

Parties to appear before Commissioner.

18. (1) Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

(2) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence.

---

I. 1. Sub-Rule (1) reproduces Paras 1 and 2 of Section 384 of the old Regulation.

2. Sub-Rule (2) is taken from the British Indian Code, and enables the Court within the local limits of whose jurisdiction a witness resides to issue a summons for his examination on the application of the commissioner.

3. Sub-Rule (3) formed the Proviso to the old Section 384. It does not occur in the British Indian Code. In the Statement of Objects and Reasons appended to the Bill which became Regulation II of 1065, it was explained that "as it was deemed undesirable to empower a commissioner other than a Court of Justice to impose penalties, a proviso to that effect had been added."— *S. O & R. Para 59.*

II. See Appendix I, Form No. 7, for Form of commission to examine absent witness.

**Case Law.**

(1) Section 385, C. P. C., must be read along with Sections 377 and 378 [= rr. 9 & 10], and an omission to issue notice to the parties under Section 385 would not justify the reception of the report of the commissioner in evidence under Section 378.

The omission to issue notice could not be regarded as a mere irregularity to be taken into account in determining the evidentiary value of the report. Even in cases where the presiding officers of Court conducted a local inspection for testing the accuracy and value of the evidence let in, the desirability of doing the same in the presence of the parties has always been insisted upon. Though there is no express provision of law as regards such requirements so far as the Civil and Criminal Courts of this State are concerned, it has been an established practice, here as well as in other jurisdictions, to allow such local inspections by the presiding officers themselves 'to understand

**Or. XXVI, r. 18** [= S. 385 = *Or. XXVI, r. 18*]

I. The second Para of the old Section corresponding to Sub-Rule (2) was:—"If the parties do not so appear, the commissioner may proceed *ex parte.*

## ORDER XXVII.

### Suits by or against the Government or Public Officers in their official capacity.

Suits by or against Government.

1. In any suit by or against the Dewan of Travancore, the plaint or written statement shall be signed by such person as the Government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is acquainted with the facts of the case.

Persons authorised to act for Government.

2. Persons being *ex-officio* or otherwise authorised to act for the Government in respect of any judicial proceeding shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of the Government.

---

the better the evidence which is laid before them', taking care however that such inspections are held in the presence of the parties or their pleaders, and an accurate record of the observations made by them is also duly prepared. If the presence of the parties is considered imperative in the case of local inspections conducted by the presiding Officers themselves, it would be anomalous to hold that their delegates have greater powers in such matters. Even on grounds of expediency, the presence of the parties at local investigations should be required, as it will then only be possible for them to avoid any miscarriage of justice by erroneous impressions based on facts observed during the inspection which could be satisfactorily explained away.

(2) When a finding is based solely upon evidence furnished by a report made without issue of notice to parties, it is a case of an error in the application of a rule of evidence which would justify interference by the High Court in second appeal. Reading Sections 558 and 554 [new Sections 79 and 80], the question is whether, in the absence of direct evidence, a particular inference or conclusion from a certain set of facts is one of law and not merely of facts. It has been held that errors in law, including errors in appreciating or applying the rules of evidence or the judicial methods of weighing evidence are matters which justify interference.— **17 T. L. J.,** ***345.***

---

**Or. XXVII, r. 1** [= ,, = ***Or. XXVII, r. 1***]

See Sections 64 and 65, ***Supra.***

---

**Or. XXVII, r. 2** [= S. 402 = ***Or. XXVII, r. 2***]

**Case Law.**

Under the Land Acquisition Regulation III of 1097, a Land Acquisition Officer is a Court having all the powers of a Civil Court under the Civil Procedure Code, and is thus competent to entertain applications for review of the award made by him.

As it is the Sirkar that is interested in seeing that no more than the proper value of the land acquired is adjudged to the owners, the Sirkar is the party aggrieved, within the meaning of Section 569, C. P. C. [new Section 88] by an excessive award,

3. In suits by or against the Dewan of Travancore, instead of inserting in the plaint the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert the words "The Dewan of Travancore".

Plaints in suits by or against Government.

4. The Government pleader in any Court, or such other person as the Government may for any Court appoint in this behalf, shall be the agent of the Government for the purpose of receiving processes against the Dewan of Travancore issued by such Court.

Agent for Government to receive process.

5. The Court, in fixing the day for the Dewan of Travancore to answer to the plaint, shall allow a reasonable time for the issue of instructions to the Government pleader to appear and answer on behalf of the said Dewan of Travancore, and may extend the time at its discretion.

Fixing of day for appearance on behalf of Government.

6. The Court may also, in any case in which the Government pleader is not accompanied by any person on the part of the Dewan of Travancore who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

Attendance of person able to answer questions relating to suit against Government.

---

and hence entitled to file an application for review to reduce the amount of the award.

Under the Civil Procedure Code, suits by or against Government should be instituted by or against the Dewan, though persons being *ex officio* or otherwise authorised to act for Government are deemed to be recognised agents entitled to make applications and do acts, &c., on behalf of Government.

As the Deputy Tahsildar in the case was neither *ex officio* nor otherwise authorised to act for Government, the application for review presented by him against the excessive award was not made in accordance with law and was wrongly entertained by the Land Acquisition Officer, and the modification of the award on the basis of such review was bad (F. B.).—

**30 T. L. R.,** *197*
(**= 4 T. L. J.,** *233*).

**Or. XXVII, r. 3** [=S. 403
=*Or. XXVII, r. 3*]

**Or. XXVII, r. 4** [= S. 404
=*Or. XXVII, r. 4*]

**Or. XXVII, r. 5** [= S. 405
=*Or. XXVII, r. 5*]

**Or. XXVII, r. 6** [= S. 406
=*Or. XXVII, r. 6*]

Extension of time to enable public officer to make reference to Government.

7. (1) Where the defendant is a public officer and, on receiving the summons, considers it proper to make a reference to the Government before answering the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel.

(2) Upon such application, the Court shall extend the time for so long as it appears to it to be necessary.

Procedure in suits against public officer.

8. (1) Where the Government undertakes the defence of a suit against a public officer, the Government pleader, upon being furnished with authority to appear and answer the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register of civil suits.

(2) Where no application under Sub-rule (1) is made by the Government pleader on or before the day fixed in the notice for the defendant to appear and answer, the case shall proceed as in a suit between private parties:

Provided that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

## ORDER XXVIII.

### Suits by or against Military men.

Officers or soldiers who cannot obtain leave may authorise any person to sue or defend for them.

1. (1) Where any officer or soldier actually serving the Government in a military capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead.

(2) The authority shall be in writing and shall be signed by the officer or soldier in the presence of (*a*) his commanding officer, or the next subordinate officer, if the party is himself the commanding officer, or (*b*) where the officer or soldier is serving in military staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

Or. XXVII, r. 7 [= S. 408 =*Or. XXVII, r. 7*]

Or. XXVII, r. 8 [= Ss. 411 & 412 = *Or. XXVII, r. 8*]

(3) When so filed, the countersignature shall be sufficient proof that the authority was duly executed, and that the officer or soldier by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

*Explanation.*—In this Order, the expression "commanding officer" means the officer in actual command for the time being of any regiment, corps, detachment or depot to which the officer or soldier belongs.

Person so authorised may act personally or appoint pleader.

2. Any person authorised by an officer or a soldier to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer or soldier could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer or soldier.

Service on person so authorised, or on his pleader, to be good service.

3. Processes served upon any person authorised by an officer or a soldier under Rule 1 or upon any pleader appointed as aforesaid by such person shall be as effectual as if they had been served on the party in person.

Execution against officer or soldier serving in military capacity.

4. (1) Where, in the execution of a decree, a warrant of arrest or other process is to be executed against an officer or soldier actually serving the Government in a military capacity, the officer charged with the execution of such warrant or other process shall deliver the same to the commanding officer.

(2) The commanding officer shall back the warrant or other process with his signature, and in the case of a warrant for arrest, if the person named therein is within the limits of his command, shall cause him to be arrested and delivered to the officer so charged.

---

Or. XXVIII, r. 1 [= S. 444 =*Or. XXVIII, r. 1*]

The Explanation is new.

Or. XXVIII, r. 2 [= S. 445 =*Or. XXVIII, r. 2*]

Or. XXVIII, r. 3 [= S. 446 =*Or. XXVIII, r. 3*]

Or. XXVIII, r. 4 [=S. 448 = ,, ]

This Rule is the same as Section 448 of Regulation II of 1065. There is no corresponding provision in the Indian Code.

## ORDER XXIX.

### Suits by or against Corporations.

Subscription and verification of pleading.

1. In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

---

Or. XXIX, r. 1 [=S. 415 =*Or. XXIX, r. 1*]

I. The corresponding Section of Regulation II of 1065 was as follows:—

"415. *Subscription and verification of plaint.*—In suits by a Corporation or by a Company authorized to sue and be sued in the name of an officer or of a trustee, the plaint may be subscribed and verified on behalf of the Corporation or Company by any director, secretary or other principal officer of the Corporation or Company, who is able to depose to the facts of the case."

II. The heading of Chapter XXVIII, corresponding to Order XXIX is:—"Suits by and against Corporations and Companies." Agreeably to the British Indian Code, all references to companies authorised to sue and be sued in the name of an officer or of a trustee, have been omitted. Such companies, the Indian Special Committee explained, "must be very few, if, indeed any exist, and they do not appear to the Committee to call for special treatment."

#### Case Law.

1. Plaintiffs, who were appointed Kizhi and Pattola respectively of a Samuham by the President of its managing committee, without consulting any members thereof, sued to recover a sum of money due to the Samuham under a bond. The contention of defendants was that the plaintiffs were incompetent to sue on behalf of the Samuham.

*Held.*—The Kizhi and Pattola being only servants of the institution, could not be accepted as its legal representatives authorized to sue under Section 415 of the Civil Procedure Code, unless expressly constituted as such by the members. Section 417 [=Or. XXXI, r. 1] applies to suits concerning property *vested* in a trustee, executor or administrator. The person suing under this Section must be a duly appointed trustee and have the property *vested* in him as such. In other words, a trustee under this Section is one expressly constituted a trustee for the purposes of representing the beneficiary in suits.

The Kizhi and Pattola being themselves members of the Samuham, may sue on its behalf, but subject to the provisions of Section 26 [=Or. I, r. 8 (1)]. In such case, the Court of first instance should give notice to all the members of the Samuham, before trying the suit.— **12 T. L. R., *145*.**

2. Where a District Judge ruled differing from the Munsiff, that the plaintiff, the Pattola of a Samooham, is competent to sue for recovery of property on behalf of the Samooham:

*Held.*—The relative position of Pattola and Samooham being that of servant and master, the former could not sue on behalf of the latter without their authority, express or implied, it being a procedure wholly unauthorised by law.

Even if there be an admission on the defendant's part as to the plaintiff's authority or competency to sue, the plaintiff could not maintain the suit on the face of the decided unwillingness of the Samoohakars to sue.

Inasmuch as the plaintiff persistently prosecuted the suit despite the objections of the Samoohakars, the costs of suit should be met from plaintiff's private funds and not from those of the Samooham.—

13 T. L. R., 78.

3. Suit by the Secretary of State for India in Council for refund of stipend given to defendant who was for some time a stipendiary student of the Government Forest School at Dehra Dun but who was dismissed from there for misconduct. The plaint was signed and verified by the Hon'ble Mr. A. G. Cardew, Revenue Secretary to the Government of Madras. The defendant, *inter alia*, contended that the Secretary of State for India in Council was not a corporation, and that, even if he was, the plaint was not properly signed and verified. The Court of first instance dismissed the suit as the plaint was not signed and verified by a proper person under Section 415 of the C. P. C. When the suit was pending before the Munsiff, the Government of Madras (in pursuance of Order 27, Rule I of Act V of 1908) issued a Notification, dated 12th March 1913, empowering with retrospective effect all Secretaries to Government *ex officio* to sign and verify all pleadings in suits, by or against the Secretary of State for India in Council. This Notification had been brought to the notice of the Munsiff who held that the Notification was not binding on him. On appeal, the District Judge held that the Secretary of State was a corporation and that the plaint in the case was properly signed and verified, and remanded the suit to the Munsiff for trial on the merits. The defendant appealed to the High Court against the order of remand, Meanwhile, *i. e.*, five days after the Munsiff's decree dismissing the suit, a Proclamation was issued (14-6-1913) under His Highness the Maha Rajah's Sign Manual to the effect that the Government of His Majesty the King-Emperor of India may sue and be sued in the Courts of this State in the name of the Secretary of State for India in Council and that all pleadings in such suits may be signed and verified by the Officers empowered in that behalf with respect to similar suits in British India. The Proclamation was expressly given retrospective effect. On these facts, the questions that arose for decision were whether the Secretary of State for India in Council was a corporation, whether the plaint in the suit was properly signed and verified, whether, granting it was not so in the beginning, the Madras Government Notification dated 12-3-1913 did not cure the defect, whether the Courts in this State were bound to take judicial notice of such Notification and act upon its terms, whether the Royal Proclamation dated 14-6-1913 was validly issued, and even if so whether such Proclamation could prejudicially affect vested rights in so far as it was issued after date of decree.

*Held.*—For purposes of filing suits in India, the Secretary of State for India in Council must be regarded as a corporation.

A corporation created by an English Statute would fall under Section 415, C. P. C. (Travancore), and might, therefore, sue and be sued in the Travancore Courts.

The Hon'ble Mr. Cardew who had subscribed and verified the plaint in the present case as Revenue Secretary to the Government of Madras, might not improperly be termed a 'Principal Officer of the corporation' (*viz.*, the Secretary of State for India in Council) within the meaning of that expression as used in Section 415 of the C. P. C., and the plaint in the suit had therefore been signed and verified by a proper person.

It was unnecessary to decide the broad question whether the Sovereign was competent to legislate except it be under one or other of the provisions of the Legislative Council Regulation (V of 1078), as the subject-matter of the Royal Proclamation dated 1-11-1088/14-6-1913 appertained to "the relations of Our Government with the Paramount Power or with foreign Princes or States" mentioned in proviso 2 (*b*) of Section 12 of the Legislative Council Regulation, as to which, Section 14 of the

Service on corporation.

2. Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served—

(a) on the secretary, or on any director, or other principal officer of the corporation, or

(b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

---

Regulation provided that the Dewan may frame and submit to His Highness the Maha Raja any Regulation which, if assented to by His Highness, became law; and it made no difference that the enactment was styled a Proclamation instead of being called a Regulation and it apparently did not purport to have been passed under Section 14 of the Legislative Councils Regulation.

The Proclamation, having been expressly given retrospective effect, applied to the case, even though it was promulgated only after the decree of the Court of first instance, and the objection based on the rule that retrospective laws could not affect vested rights did not properly arise in the case as the right of appeal against the first decree had not been barred, and as the proceedings in the Appellate Court were but a continuation of the proceedings in the suit.

*Chatfield, J.*:—Even assuming that the plaint as originally filed was not signed and verified by a proper person, as the Notification dated 12-3-1913 issued during the pendency of the suit professed to give the Hon'ble Mr. Cardew authority to sign and verify plaints on behalf of the Secretary of State for India in Council with retrospective effect, the plaint became valid and effective for all purposes as from the date of the filing, and it was not necessary that the plaint should again be signed and verified by the Officer concerned.

It is chiefly where an enactment would prejudicially affect vested rights or the legal character of past transactions or impair contracts that the enactment should not be construed retrospectively. The presumption against a retrospective construction has no application to enactments which affect only the procedure and practice of the Courts even where the alteration which the statute makes has been disadvantageous to one of the parties.

*Viraraghava Aiyengar, J.*—Granting that, as urged by the 1st defendant, no retrospective validity can be given by the Courts of this State to the signing and verification of pleadings, appearances, applications, and acts in suits, made or done by any Secretary to the Government as laid down in paragraph 2 of the above Notification, it seems to me that this was pre-eminently a case in which the original Court, with the Notification before it, would have exercised a wiser and better discretion if it had used the powers vested in it under Section 49 of the C. P. C., [=Or. VI, r. 17 and new Sec. 117], and returned the plaint for amendment in which case the only thing necessary in my opinion to make the existing plaint a valid one would have been for the Hon'ble Mr. Cardew to put his signature over again at the place where he had already signed and verified.—

**32 T. L. R.,** ***190***
**(= 6 T. L. J.,** ***305*****).**

Ref.—17 T. L. J., 229.

**4.** See also—
Or. XXII.— **45 T. L. R.,** ***47***
**(=19 T. L. J.,** ***264*****).**

Power to require personal attendance of officer of corporation.

3. The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit.

## ORDER XXX.

### Suits by or against Firms and Persons carrying on business in names other than their own.

Suing of partners in name of firm.

1. (1) Any two or more persons claiming or being liable as partners and carrying on business in Travancore may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

(2) Where persons sue or are sued as partners in the name of their firm under Sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons.

---

**Or. XXIX, r. 2** [=S. 416=*Or. XXIX, r. 2*]

The Indian Special Committee say:—"The Committee have enlarged the language of the Code so as to allow of service by post on corporations having a registered office, and by this means, the rule is brought into line with the provisions of the Indian Companies Act."

**Or. XXIX, r. 3** [=S. 416=*Or. XXIX r. 3*]

The corresponding Section in Regulation II of 1065 was as follows:—

"416. *Service on Corporation or Company.*—When the suit is against a Corporation or against a Company authorized to sue and be sued in the name of an officer or of a trustee, the summons may be served—

(*a*) by leaving it at the registered office (if any) of the Corporation or Company, or

(*b*) by sending it by post in a letter addressed to such officer or trustee at the office (or if there be more offices than one, at the principal office) of the Corporation or Company, or

(*c*) by giving it to any director, Secretary or other principal officer of the Corporation or Company:

and the Court may require the personal appearance of any director, secretary or other principal officer of the Corporation or Company who may be able to answer material questions relating to the suit."

**Order XXX:** I. "This is wholly new. The existing Code makes no provision for a firm suing or being sued, except in the ordinary manner where several person

Disclosure of partners' names.

**2.** (1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demand in writing by or on beahlf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under Sub-rule (1), all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct.

(3) Where the names of the partners are declared in the manner referred to in Sub-rule (1), the suit shall proceed in the same manner, and the same consequences in all respects shall follow as if they had been named as plaintiffs in the plaint :

Provided that all the proceedings shall nevertheless continue in the name of the firm.

Service.

**3.** Where persons are sued as partners in the name of their firm, the summons shall be served either—

(*a*) upon any one or more of the partners, or

---

have a joint interest. In such cases all persons must be parties on the record whether as plaintiffs or defendants. The difficulties in such cases, especially where all the partners may not reside in the same place at all times are numerous and varied, and every practising lawyer and every trader is aware of such difficulties. They hamper and delay the progress of judicial proceedings, and in not a few cases, entail a failure of justice. The machinery now provided is effective, and would facilitate the speedy trial and decision in suits where firms are parties, without in any way curtailing the rights of litigants."—*Notes on Clauses.*

II. The Indian Special Committee say :- "The Committee have adopted with the necessary alterations the English procedure in relation to suits against firms. This new procedure has been in force for some time in the Presidency-towns of Calcutta and Bombay and has worked satisfactorily.

"It is hoped that its general application will be found useful by the mercantile community, for the rules remove technical obstacles which under the present procedure may seriously impede this class of litigation, as where a partner has died."

III. 1. The Rules in this Order are almost a reproduction of the principal Rules comprised in the English Order XLVIII-A.

2. See also under Rules 47 and 48 of Order XXI.

Or. XXX, r. 1 [ = „ = *Or. XXX, r. 1* = En. Or. 48-A, r. 1 ]

Or. XXX, r. 2 [ = „ = *Or. XXX, r. 2* = En. Or. 48-A, r. 2 ]

(b) at the principal place at which the partnership business is carried on within Travancore upon any person having, at the time of service, the control or management of the partnership business there,

as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without Travancore:

Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within Travancore whom it is sought to make liable.

Right of suit on death of partner.

4. Where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

(2) Nothing in Sub-rule (1) shall limit or otherwise affect any right which the legal representative of the deceased may have—

(a) to apply to be made a party to the suit, or

(b) to enforce any claim against the survivor or survivors.

---

**Or. XXX, r. 3** [= ,, = *Or. XXX, r. 3* =En. Or. 48-A, r. 3]

This Rule has to be read with Rule 1 of this Order and Rule 48 of Order XXI.

See Order V, Rule 11.

**Or. XXX, r. 4** [= ,, = *Or. XXX, r. 4*]

**Case Law.**

In a suit for money due to a partnership firm, two of the partners (plaintiffs) died during the course of the suit and their legal representatives were not brought on record. It was contended that the legal representatives of the deceased partners not having been brought on record, the suit abated as regards all the partners.

*Held.*—Where the death of a partner dissolves the partnership, the surviving partners have a right to do all things necessary for winding up the business of the partnership. Although the right of a deceased partner devolves on his executor, the remedy survives to the surviving partners, who alone must enforce the right by action, and will be liable on recovery to account to the executors or administrators of the deceased partner.

This Rule has now received judicial recognition by the enactment of Order XXX, Rule 4.— **13 T. L. J., *194*.**

Notice in what capacity served.

5. Where a summons is issued to a firm and is served in the manner provided by Rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner.

Appearance of partners.

6. Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

No appearance except by partners.

7. Where a summons is served in the manner provided by Rule 3 upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a partner of the firm sued.

Appearance under protest.

8. Any person served with summons as a partner under Rule 3 may appear under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving a summons on the firm and obtaining a decree against the firm in default of appearance where no partner has appeared.

Suits between co-partners.

9. This Order shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners in common; but no execution shall be issued in such suits except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

---

Or. XXX, r. 5 [= „ = *Or XXX, r. 5* = En. Or. 48-A, r. 4]

Or. XXX, r. 6 [= „ = *Or. XXX, r. 6* = En. Or. 48-A, r. 5]

Or. XXX, r. 7 [= „ = *Or. XXX, r. 7* = En. Or. 48-A, r. 6]

Or. XXX, r. 8 [= „ = *Or. XXX, r. 8* = En. Or. 48-A, r. 7]

Or. XXX, r. 9 [= „ = *Or. XXX, r. 9* = En. Or. 48-A, r. 10]

10. Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all Rules under this Order shall apply.

Suits against person carrying on business in name other than his own.

---

**Case Law.**

Where two persons entered into a security bond by which they made themselves liable as sureties for the carrying out of an award of arbitration with reference to the liabilities of a merchant, they cannot be regarded as forming a partnership, as, even if they agree jointly to contribute their labour in winding up the affairs of the merchant, it cannot be supposed that any profit was contemplated.

It is no doubt the rule under the common law of England that no action can be brought by one partner against another for recovery of money or property payable to the firm. This rule however never applied to proceedings in equity, and as regards common law suits, the Judicature Acts have removed the drawback. Under Order XXX Rule 9, provision is made for suits between a firm and one or more of the partners and between firms having one or more partners in common. The rule that, in no circumstances such a suit can be brought appears to be a technical rule of the old English Common Law which should not be pressed too far in Courts not subject to the common law jurisdiction. Courts in India are Courts both of law and equity and can give those remedies which Courts of equity can grant. When all the parties to the partnership are before it, the Court must do justice irrespective of technicalities.

It must, however, be pointed out that there is a difficulty as regards suits between partners in respect of one partnership transaction. It has therefore been held that a partner who has paid up a partnership debt in full is not ordinarily entitled to sue his partner for contribution, but should seek for a dissolution of partnership and a general settlement of accounts.

This, however, does not apply to a case where the relief is asked only against a stranger to the partnership and not against a partner who is only *a pro forma* party in the suit.

There is no technical objection against a suit being filed against one of two persons jointly liable. It is not incumbent on a person suing partners to make them all defendants in his suit. He is at liberty to sue any one partner as he may choose; only the Court should act in an equitable manner and so as to avoid undue hardship to the parties (F. B.).—**45 T. L. R.,** *67* (= **19 T. L. J.,** *90*).

---

**Or. XXX, r. 10** [ = „ = *Or. XXX, r. 10* = Eng. Or. 48-A, r. 11 ]

---

## ORDER XXXI.

### Suits by or against Trustees, Executors and Administrators.

Representation of beneficiaries in suits concerning property vested in trustees, etc.

1. In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties.

Joinder of trustees-executoirs and administrators.

2. Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them:

Provided that the executors who have not proved their testator's will, and trustees, executors and administrators outside Travancore, need not be made parties.

---

**Or. XXXI. r. 1** [=S. 417=*Or. XXXI, r. 1*]

**Case Law.**

**1.** The Ooralers are the proper representatives of a Devaswom, and not its Samudayam or accountant. A decree obtained by a Samudayam or accountant as representative of a Devaswom will not bind the institution.— **12 T. L. R.,** ***138.***

Appl.—17 T. L. R. App., 38.

Ref.— 18 T. L. R., 129.
2 S. D., 40.

**2.** A suit for damages for a wrongful act by which a temple is said to have been polluted can only be brought by the Ooralers of the temple and not by a paid Samudayam or manager.— **16 T. L. R.,** ***78.***

**3.** A Karaima Samudayam as such cannot sue as plaintiff to cancel an alienation of Devaswom property without the consent and against the will of the Ooralers.

Such a Samudayam may sue tenants for rents and renewal fees where such power has been vested in him by the usage of the particular Devaswom (F. B.).— **18 T. L. R.,** ***129.***

Fol.—8 T. L. J., 214.

**4.** A Samudayam cannot maintain a suit for recovery of Devaswom property and arrears of rent without consulting the Ooralers. A Samudayam may sue for rent only when such a power has been vested in him by usage in the particular Devaswom.— **8 T. L. J.,** ***214.***

**5.** See also—
Sec. 78.— **1 T. L. J.,** ***203.***
Or. XXIX, r. 1.—**12 T. L. R.,** ***145.***
**13 T. L. R.,** ***78.***

---

**Or. XXXI, r. 2** [=S. 418=*Or XXXI, r. 2*].

The Proviso is new. The word "trustees" has been inserted after the word "several" in the main Para.

**Case Law.**

See Sec. 78.—**1 T. L. J.,** ***203.***

Husband of married executrix not to join.

3. Unless the Court directs otherwise, the husband of a married trustee, administratrix or executrix shall not as such be a party to a suit by or against her.

## ORDER XXXII.

### Suits by or against Minors and Persons of Unsound Mind.

Minor to sue by next friend.

1. Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

---

**Or. XXXI, r. 3** [=S. 419=*Or. XXXI, r. 3*]

The word "trustee" has been inserted after the word "married".

**Order XXXII**: "This is mostly a re-enactment of the provisions contained in Chapter XXX of the existing Civil Procedure Code. A few additional provisions are added whose effect is as follows:—(1) Notice of applications for appointments of guardians *ad litem* has to be given to the minors also. It has the advantage of eliciting the opinion of the minor himself, when he is competent to give such opinion. (2) When a guardian of the person or property of a minor has been appointed by a competent authority, provision is made that no one else shall act for the minor, subject to the discretion of the Court to appoint any one else. (3) When a compromise is entered into, the order of the Court sanctioning such compromise is directed to be express. (4) The Court is required to get security in all cases from the guardian when money or movable property is received on behalf of the minor, except ordinarily where the guardian has been appointed guardian of the properties by a competent authority. The existing provision in favour of parents and Karanavan is thus removed"

*Notes on Clauses.*

**Case Law.**

Where it appears to the Court that a suit has been commenced by a next friend, if the Court finds that the suit is not for the benefit of the minor, the Court may direct the next friend to pay the costs. But where there are reasonable grounds for instituting the suit and the next friend has acted *bona fide*, the Court will not mulct the next friend in costs, but will direct the same to come out of the estate. This is the general rule.

Order XXXII does not contain any rule which expressly prohibits an order being made personally against a minor for the payment of the costs of the opposite side.

Where the court which decides the case, directs the minor who had since attained majority, to be personally liable for costs, though suit was originally instituted by his next friend, it is not open to the execution Court to vary the direction.—

**19 T. L. J.,** *1021.*

**Or. XXXII, r. 1** [= S. 420 = *Or. XXXII, r. 1*]

The words "and may be ordered to pay any costs in the suit as if he were the plaintiff" which occurred after the words "friend of the minor," at the end of the corresponding Section 420 of Regulation II of 1065 have been omitted; as also the word "adult" which occurred before the word "person".

**Case Law.**

1. B, a Malabar Brahmin (Potti) adopted his sister's son A, with the consent of

2. (1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file with costs to be paid by the pleader or other person by whom it was presented. No order directing the pleader to pay costs shall be made unless the fact of minority is apparent on the face of the plaint or the pleader knew or might reasonably have known the fact of minority.

Where suit is instituted without next friend, plaint to be taken off the file.

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any), may make such order in the matter as it thinks fit.

---

the members of his family. After B's death his paternal uncle (C) adopted D's son and executed an agreement to him confirming that adoption. A, the minor, brought an action against C and D to have the said agreement cancelled.

*Held.*—Where a suit is instituted by a minor without the intervention of a next friend, and the defendant, without question allows the case to proceed to decree, he (defendant) cannot be permitted in appeal to question the validity of that decree on the ground of plaintiff's minority (F. B.).— **9 T. L. R.,** *160.*

**2.** The restriction as to the incompetency of minors to institute or defend any 'suit' except through their next friend or guardian applies also to appeals (F. B.).— **11 T. L. R.,** *11.*

**3.** The law does not insist upon the legal guardian bringing a suit on behalf of his ward and, under Sections 420 and 425 [Rule 4] of the Civil Procedure Code, *any* adult male person whose interest is not adverse to that of a minor may bring a suit on behalf of the minor as the minor's next friend without previous sanction of the Court.

No Court can allow the next friend of a minor to give up, on whatever grounds, any portion of the claim of the minor, as it is an act prejudicial to the interests of the minor. The next friend must be required to include the portion of the claim omitted. If upon such inclusion, the whole claim is found to be beyond the jurisdiction of the Munsiff, the plaint must be returned for presentation to a proper Court.— **14 T. L. R.,** *37.*

**4.** Where in a suit instituted against a minor through her next friend, it turned out that the minor was really a major at the date of suit :

*Held.*—The decree, so far as the alleged minor's interests are concerned, should be cancelled.— **1 S. D.,** *260.*

**5.** A formal order appointing a person as next friend of a minor is not essential under Section 420, C. P. C., though such an order may be thought expedient.— **2 S. D.,** *79.*

Ref.—19 T. L. J., 884.

[See Sub-Rule (2) of Rule 4 *Infra.*]

**6.** A decree was obtained for a debt due from the deceased father of certain minor sons who were the heirs, against their mother, the widow of the deceased, and it was found that it was not intended to sue her as the guardian of minors. The minors brought the suit to declare that the decree was not binding on them and that it was invalid, as it had been obtained without proper parties on record.

*Held.*—The widow did not represent the estate so as to bind the minor sons when their existence was, from whatever causes,

altogether ignored and there was nothing on the face of the proceedings to show that she was sued as representing the minor sons who were the heirs of the deceased and the decree would not bind them (F. B.).— **37 T. L. R.**, *72* (=**10 T. L. J.**, *444*).

**7.** A Nair husband or wife, who is a minor or is under some legal disability has got the right of presenting a petition for dissolution of marriage under Section 5 of the Nair Regulation (I of 1088). The procedure in the case of such petition is that prescribed in Chapter XXX of the Code of Civil Procedure [= Order XXXII], read with the relevant Sections of the Nair Regulation itself (F. B.).— **40 T. L. R.**, *310* (= **15 T. L. J.**, *79*).

**8.** See also—
Or. XXXII, r. 2.—**17 T. L. R.**, *166*.
„ XXXIII, r. 10.—**K. P.**, *455*.

## Or. XXXII, r. 2 [= S. 422 = *Or. XXXII, r. 2*]

I. This Rule reproduces the corresponding Rule in the British Indian Code, with the addition of the second sentence in Sub-Rule (1).

II. As compared with Section 422 of Regulation II of 1065, the changes made are :—The words " Where a suit is instituted" have been substituted for the words "If a plaint be filed," in Sub-Rule (1). The words " by the defendant" which occurred after the word "person" in the second sentence of the old Section corresponding to Sub-Rule (2) have been omitted.

III. Neither the British Indian Code nor Regulation II of 1065, contains the Clause " No order directing.........fact of minority" now found in Sub-Rule (1). This was put in by the Select Committee.

It may be noted here that a provision similar to the above Clause was made in the 1901 Bill to amend the British Indian Civil Procedure Code, and the Statement of Objects and Reasons said :—"It is proposed to follow the ruling in the case of Rattanbai V. Chabildas Lalloobhoy (1888), I. L. R., 13 Bom. 7, and lay it down that the omission to join a next friend is not a nullity but an irregularity, and that a plaint should not be struck off except when it appears, on the face of it, that it was filed by a minor, or when it is proved to have been filed with the knowledge of the fact of minority and with the intention of deceiving the Court and evading the payment of costs in the event of failure."

But the Select committee which reported on that Bill did not consider it necessary to provide specially for the case adverted to by the High Court at Bombay.

### Case Law.

**1.** A District Judge ordered that a plaint be taken off the file with costs to be recovered from the estate of the plaintiffs who were declared to be minors.

*Held.*—The order for the recovery of defendant's costs from the minors' estate was illegal.— **17 T. L. R.**, *166*.

**2.** Section 422, C. P. C., does not make it obligatory on a next friend or guardian *ad litem* to obtain the permission of the Court before stating on oath or putting down in writing that the claim of the adversary is true. Such an admission is not an agreement or compromise within the meaning of that Section and may therefore be acted on by the Court in its discretion (F. B.).— **9 T. L. J.**, *248*.

**3.** See also.—
Or. XXXIII, r. 10.—**K. P.**, *455*.

3. (1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

Guardian for the suit to be appointed by Court for minor defendant.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed. The affidavit shall further state the name of the person or persons on whom notice has to be served under the provisions of Sub-rule (4).

(4) No order shall be made on any application under this Rule except upon notice to any guardian of the minor appointed or declared by an authority competent in that behalf or, where there is no such guardian, upon notice to the father or other natural guardian of the minor, or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this Sub-rule.

(5) When the enforcement of a decree is applied for against the heir or representative, being a minor, of a deceased party, a guardian for the suit of such minor shall be appointed by the Court, and the decree-holder shall serve on such guardian notice of such application.

---

Or. XXXII, r. 3 [=Ss. 423, 436, 440 = *Or. XXXII, r. 3*]

I. Rule 3 reproduces the corresponding Rule of the British Indian Code, excepting Sub-Rule (5) which is not in that Code.

II. 1. *Sub-Rule (1)*.—In Section 423 of Regulation II of 1065, the words "to a suit" occur after the word "defendant," and after the word "minor" at the end, the following words occur :—"to put in the defence for such minor, and generally to act on his behalf in the conduct of the case."

2. *Sub-Rule (2)*.—This reproduces the first sentence of the first para of Section 436 of the old Regulation.

3. *Sub-Rule (3)*.—The first sentence of this Sub-Rule reproduces the second sentence of the first para of Section 436. The second sentence of this Sub-Rule was added by the Select Committee. There is no such provision in the British Indian Code.

The old Section 436 has a second paragraph for which see next Rule.

4. *Sub-Rule (4)*.—This Sub-Rule is new and reproduces Sub-Rule (4) of the British Indian Code, omitting the words "the minor and to" which occur in that Code after the words "except upon notice to." The deletion was made by the Select Committee.

In regard to this Sub-Rule, the Indian Special Committee say :—"This is based upon Section 443. The Committee think it necessary to ensure that notice should reach one interested in the minor's welfare, and this Rule aims at securing this result."

5. *Sub-Rule* (5).—This reproduces Section 440 of Regulation II of 1065. The original Bill had omitted this provision. It was added by the Select Committee.

III. For Form of Notice to minor defendant and guardian, see Appendix I, Form No. 11.

**Case Law.**

1. Where the plaintiff moved for the appointment of a guardian to a minor defendant and the Court issued notice to the proposed guardian to show cause, if any, against his appointment, but the notice was not served on him personally and he did not appear in response to it on the date fixed, and the Munsiff thereupon appointed him guardian and declared him *ex parte* and tried and disposed of the suit in his absence :

*Held.*—Such a procedure was illegal. The Munsiff should have taken proper steps to appoint a proper guardian *ad litem* and thereafter disposed of the suit.—

**30 T. L. R.,** ***46.***

Dist.—36 T. L. R., 261
( =10 T. L. J., 371).

2. Ordinarily where a minor is a necessary party to a suit, the fact of his not being represented will have the same effect as the omission to make him a party. This rule has no application to cases where the minor although not a party would have been bound by the decree or order.

Where, therefore, a decree is obtained against a widow for a debt due from her husband and where the decree-holder in execution of the decree obtained by him proceeds to execute the decree against the estate of the woman's husband, it may be inferred that the widow was sued in her representative character and that ordinarily the proceedings against her as such representative would be effectual against the estate notwithstanding that her sons who were minors were not impleaded as parties in that litigation.

It cannot be said that simply because a widow who is in possession of her husband's estate does not, in executing documents, especially promissory notes and simple debt bonds, describe herself as the guardian of her infant sons (who are his only heirs), she must be deemed to have entered into that transaction in her individual character and that those who accepted such documents from her dealt with her on that basis.— **9 T. L. J.,** ***342.***

Diss.—37 T. L. R., 72
( = 10 T. L. J., 444).
Ref.—19 T. L. J., 867.

3. Assuming that the Court should, under Section 436, C. P. C., satisfy itself that the person sought to be appointed as the minor's guardian *ad litem* was willing to act as such before it could appoint him to that office, the omission to do so is only an irregularity—it may be styled serious irregularity—and such irregularity does not of itself go to vitiate the decree passed in the suit. It will be of course open to the minor who is affected by such a decree to show in subsequent proceedings that the irregularity has actually prejudiced his rights, by proving that the claim in the prior suit was an invalid one or had been satisfied either wholly or partially at the date of the prior suit or that there were other defences which could have been but were not put forward in answer to the claim.

Care should be taken by the lower Courts to see that the provisions of Section 436 are complied with. The safer course, when the person who is sought to be appointed as guardian *ad litem* does not appear and express his willingness to act as such, would be for the Court to see if there is any person other than the person nominated, fit and willing to accept that office, and, if no such person

Who may act as next friend or be appointed guardian for the suit.

4. (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit :

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant or, in the case of the guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent be appointed guardian for the suit.

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or

---

can be found, to appoint any of its officers to be such guardian as directed in that Section (F. B.).— **36 T. L. R.**, *261* (=**10 T. L. J.**, *371*).

Ref.—16 T. L. J., 869.
19 T. L. J., 867.

**4.** A decree was obtained on a debt bond against the members of an undivided Hindu family. One of the defendants (the plaintiff in the suit) was a minor and was not properly represented and hence it was declared that the decree could not be executed against him. Family properties were sold in Court auction in execution of the decree.

Plaintiff sued to set aside the execution sale to the extent of his share and recover the same.

*Held.*—The Court sale was only a voidable transaction and the plaintiff should set it aside in order to clear the ground for enforcing the claim for partition. Article 8 of the Limitation Regulation applied to the suit.

So long as the grounds on which the Court sale is sought to be cancelled are such as would fall within Article 8, it is quite immaterial whether the suit was brought by one who was a party to the litigation or who was not a party to it or who though made a party to it is found to have been not properly impleaded.— **10 T. L. J.**, *299*.

**5.** A decree passed against a person when he was *non compos mentis* and was not properly represented in the suit, is made without jurisdiction and is a nullity.— **14 T. L. J.**, *402*.

**6.** See also—

Or. IX, r. 13.— **21 T. L. R.**, *70*.
" XXII, r. 5.— **24 T. L. R.**, *131*.
" XXXII, r. 1.— **37 T. L. R.** *73* (=**10 T. L. J.**, *444*).
" " r. 4.— **34 T. L. R.**, *57*.
" " r. 7.— **20 T. L. R.**, *54*.

out of any fund in Court in which the minor is interested and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

(5) When a guardian for the suit of a minor defendant is appointed, and it is made to appear to the Court that the guardian is not in possession of any or sufficient funds for the conduct of the suit on behalf of the defendant, and that the defendant will be prejudiced in his defence thereby, the Court may, from time to time, order the plaintiff to advance moneys to the guardian for the purpose of his defence and all moneys so advanced shall form part of the costs of the plaintiff in the suit. The order shall direct that the guardian, as and when directed, shall file in Court an account of the moneys so received by him.

---

Or. XXXII, r. 4 (1) [ = Ss. 425, 437 = *Or. XXXII, r. 4 (1)* ]

" r. 4 (2) [= " = *Or. XXXII, r. 4 (2)*]

" r. 4 (3) [= " = *Or. XXXII, r. 4 (3)*]

" r. 4 (4) [= S. 436, Para 2 = *Or. XXXII, r. 4 (4)* = En. Or. 65, r. 13 ]

" r. 4 (5) [ = " = " ]

I. *Sub-Rule (1)*.—Sections 425 and 437 of Regulation II of 1065 ran as follow :—

"425. *Who may be next friend.*—Any person being of sound mind and full age may act as next friend of a minor, provided his interest is not adverse to that of such minor, and he is not a defendant in the suit.

"437. *Who may be guardian* ad litem.—A co-defendant of sound mind and of full age may be appointed guardian for the suit, if he has no interest adverse to that of the minor, but no plaintiff can be so appointed."

II. *Sub-Rule (4)*.—1. Para 2 of the old Section 436 corresponding to this Sub-Rule was as follows :—"Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, provided that he has no interest adverse to that of the minor."

2. Rule 13 of Order LXV of the Rules of the Supreme Court, 1883, is as follows:—"13. Where the Court or a Judge appoints one of the solicitors of the Court to be guardian *ad litem* of an infant or person of unsound mind, the Court or Judge may direct that the costs to be incurred in the performance of the duties of such office shall be borne and paid either by the parties or some one or more of the parties to the cause or matter in which such appointment is made, or out of any fund in Court in which such infant or person of unsound mind may be interested, and may give directions for the repayment or allowance of such costs as the justice and circumstances of the case may require."

III. *Sub-Rule (5)*.—This is not in the British Indian Code. It is an addition made by the Select Committee.

### Case Law.

1. Suit by an undivided co-parcener for recovery of property said to have been trespassed upon by the guardians of the minor daughters of his deceased co-parcener, as the deceased's legal heir and representative on the ground that the property descends, as such, to him by right of survivorship, the deceased having left no male issue. The

Representation of minor by next friend or guardian for the suit.

5. (1) Every application to the Court on behalf of a minor, other than an application under Rule 10, Sub-rule (2), shall be made by his next friend or by his guardian for the suit.

(2) Every order made in a suit or on any application before the Court, in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

---

defendants raised the plea that the minors are the rightful owners of the property, it being their father's self-acquisition.

*Held.*—The plaintiff's paternal relation of the minors who claims adversely, as against them, the whole property to be his cannot hold the position of their guardian in preference to their maternal relations, Section 437 prohibiting his appointment as guardian of the minor defendants.—
**12 T. L. R.,** *202.*

**2.** The plaintiff or the appellant should make the necessary advances in order to enable the official guardian of the minor defendant or respondent to meet the expenses incidental to the conduct of the defence, and should take credit for the same at the time of the final adjustment under the decree. If the plaintiff or the appellant succeeds in the case, the final decree should order him to pay the costs of the official guardian, giving him liberty to add what he should so pay to his own costs of the suit as against the minor defendant or respondent, as the case may be.— **34 T. L. R.,** *57.*

**3.** Under the Code of 1065, no express permission of Court is necessary for a next friend to institute a suit for a minor. No change in this matter has been effected by Order XXXII, Rule 4, of the Code of 1100.

The Proviso to Rule 4 requires a specific order only in cases where a guardian has been appointed for the person or property of the minor by a Court of competent jurisdiction and a person other than such a guardian files a suit on behalf of the minor. There is no warrant for holding, on the strength of the Proviso, that leave has to be obtained from Court even in cases not falling under the above category.

Even in cases covered by the Proviso, an express order of Court is not peremptory, and a suit should not be allowed to be defeated for want of such express order, if the intention of the Court as gatherable from the proceedings relating to the suit has been to grant such permission.—
**44 T. L. R.,** *458*
( =**10 T. L. J.,** *884*).

---

**Or. XXXII, r. 5** [ = Ss. 421, 424
=*Or. XXXII, r. 5*]

Sub-Rule (1) reproduces Section 421 and Sub-Rule (2), Section 424, of Regulation II of 1065.

---

Next friend or guardian not to receive money without leave of Court and giving security.

6. No sum of money or other thing shall be received or taken by a next friend or guardian for the suit on behalf of a minor, unless he has first obtained the leave of the Court and given security to its satisfaction that such money or other thing shall be duly accounted for to, and held for, the benefit of such minor :

Provided that, where the next friend or guardian for the minor happens to be the parent or karanavan of such minor, the Court may, for any special reason to be recorded, dispense with the security, when such next friend or guardian is after decree allowed to receive any sum of money or any property on behalf of the minor.

---

**Or. XXXII, r. 6 [=S. 441 = *Or. XXXII, r. 6*]**

I. 1. The original Bill adopted the corresponding Rule of the British Indian Code which was a reproduction of Section 461 of the Code of 1882. But the Select Committee considered it "more expedient to adhere to the existing provisions", and substituted Section 441 of Regulation II of 1065, in place of the new provision in the Bill.

2. In regard to the old Section (441), the Statement of Objects and Reasons appended to the 1065 Bill said :—"Section 461, as it stands in the British Code, does not protect the right of the minor in the property received by the guardian in pursuance of a decree. It is, therefore, so amended as to restrict the discretion of the Court in the matter of dispensing with security after decree."— *S. O & R., Para 63.*

II. Rule 6 of this Order in the British Indian Code is as follows :—

"6. *Receipt by next friend or guardian for the suit of property under decree for minor.*—(1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other movable property on behalf of a minor either—

(*a*) by way of compromise before decree or order, or

(*b*) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other movable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application."

**Case Law.**

1. Plaintiff, a childless widow, as the heiress of her deceased husband, sued her father-in-law's divided brother for the recovery of a hypothecation amount due by the latter to her father-in-law. The lower Court gave her a decree, and ordered that before she drew the amount adjudged to her, which may be deposited by the defendant in Court, she must furnish security to indemnify defendant, her reversioner.

*Held.*—Section 441, C. P. C., prohibits the next friend or guardian, *ad litem*, of a minor party from taking money from Court without its leave and without giving security. To impose any such condition on the widow would be simply fettering her with more restrictions than thos imposed by the law on her acts.— 1 S. D., 73.

2. Where, as in the case, the minor could not be considered to have come forward

7. (1) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

Agreement or compromise by next friend or guardian for the suit.

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than minor.

---

to execute any prior decree or order of the Court in her favour against the surety, an order passed under Order XXXII, Rule 6, could not be considered to have fallen within the purview of any of the Clauses of Section 109. The remedy of the minor in such cases lies if at all in a separate suit.

The old Section 249 [new Section 109] restricted its operation only to suretyship entered into before the passing of the decree, whereas, the Code of 1100 has enlarged the scope of the cases in which the surety could be held liable to be proceeded against in execution.

The circumstances under which security is given, and the manifest object of the parties in taking the security may be looked into in determining whether the particular case in hand would be covered by Section 109.

Where there is no prior executable order or decree sought to be enforced in the proceedings, the omission to raise the plea of want of jurisdiction at the earlier stages of the case, could not be deemed to be a fatal objection to the application in execution.—
**18 T. L. J.**, *655*.

**3.** A reading of Section 441 and Rule 6 of Order XXXII shows that it relates to withdrawal from Court of money belonging to the minors available, by the next friend or guardian. It cannot presumably relate to transactions out of Court. Of course, the Court will have to enquire into the propriety of the transaction from the standpoint of the minor parties and examine whether their interests have been sufficiently safeguarded before recognising the same. But the above provisions should not be construed as placing a statutory bar to transactions of this kind.

Order XXXII, Rule 7, relates to compromises or agreements with respect to the subject-matter of the suits to which minors were parties. The provisions of this Rule have no bearing to assignments of decrees, for, they presumably relate to transactions between the minors on the one hand and the other parties to the suit on the other.

In the absence of any statutory prohibition declaring assignments of decrees to which the minors are parties without the previous sanction of the Courts are *ipso facto* void, the want of sanction cannot be treated as a valid objection to the validity of the assignment. The provisions of Rules 6 and 7 of Order XXXII cannot be construed as imposing such a prohibition. The Court has, however, before allowing a petition for compromise, to consider whether the transaction is beneficial to the interests of the minor. This could be done at any stage of the proceeding.—
**44 T. L. R.**, *442*
(= **18 T. L. J.**, *1284*).

---

**Or XXXII, r. 7** [= S. 442
= *Or. XXXII, r. 7*]

The words "expressly recorded in the proceedings" found in Sub-Rule (1), and the words "so recorded" in Sub-Rule (2) are additions.

8. (1) Unless otherwise ordered by the Court, a next friend shall not retire without first procuring a fit person to be put in his place and giving security for the costs already incurred.

Retirement of next friend.

(2) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed, and also that he has no interest adverse to that of the minor.

---

**Case Law.**

1. In a suit to set aside a compromise in a prior litigation entered into by the 1st defendant as guardian of his minor sons—the plaintiffs, where the latter contended *inter se* that the compromise was illegal for want of Court's sanction under Section 442, Civil Procedure Code, it was held that the defect of procedure did not amount to an illegality but only an irregularity and as it did not prejudice the plaintiff's interests in other ways, the compromise was valid.— **20 T. L. R.,** ***54.***

2. Where a minor is party to a suit and a next friend or guardian has been appointed to look after the interests of the infant in the suit, the acts of such next friend or guardian are subject to the control of the Court and no compromise can be entered into under Section 442, C. P. C., without sanction of the Court.

This rule is applicable even in cases where the next friend or guardian is the manager of the family to which the minor belongs.

Such next friend or guardian cannot do any act in his capacity of managing member. His powers are controlled by provisions of law.— **14 T. L. J.,** ***37.***

3. In granting leave under Order XXXII, Rule 7, for compromise of suits to which minors are parties, the Court has to examine whether the compromise is one for the minor's benefit. The Court need not gauge the chances of success of the minors and weigh against them the chances of their opponents, and accord sanction only if the chances of the minors appear to it to be slender. The affidavit of the guardian may be taken into consideration in determining whether the compromise is for the benefit of the minor or not. In cases where heavy interests are involved, the Court may act upon the statement of the counsel or Vakil appearing for the minor at the bar or upon his affidavit stating that in his opinion the compromise proposal is for the benefit of the minor.— **19 T. L. J.,** ***1160.***

4. See also—

Or. XXXII, r. 6.— **44 T. L. R.,** ***442*** **(=18 T. L. J.,** ***1284*****).**

Or. XLV, r. 2.— **41 T. L. R.,** ***213*** **(= 16 T. L. J.,** ***127*****).**

---

**Or. XXXII, r. 8** [ = S. 427 = *Or. XXXII, r. 8* ]

1. *Sub-Rule (1).*—The words "at his own request" which occurred after the word "retire" in Section 427 of the old Code have been omitted.

2. *Sub-Rule (2).*—The words at the end of the second para of Section 427 were :—"no interest adverse to the minor."

Removal of next friend.

9. (1) Where the interest of the next friend of a minor is adverse to that of the minor or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or during the pendency of the suit, ceases to reside within Travancore, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal ; and the Court, if satisfied of the sufficiency of the cause assigned, may order the next friend to be removed accordingly, and make such other order as to costs as it thinks fit.

(2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor, and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the suit as it thinks fit.

Stay of proceedings on removal, etc., of next friend.

10. (1) On the retirement, removal or death of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

(2) Where the pleader of such minor omits within a reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or in the matter in issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

---

**Or. XXXII, r. 9** [ = S. 426 = *Or. XXXII, r. 9*]

1. Sub-Rule (1) is the same as Section 426 of the old Regulation, with the following words newly added at the end :—"and make such other order as to costs as it thinks fit."

2. Sub-Rule (2) is new. In regard to the words at the end of this Sub-Rule regarding the terms as to costs, the Indian Special Committee who added the words "and shall thereupon.........it thinks fit" to the old Indian Section said :—"The Committee think it expedient that where a guardian insists on his right to be appointed next friend in the place of another there should be power to require him to become liable or give security for costs in the suit previously incurred."

**Or. XXXII, r. 10** [=Ss. 428, 429 =*Or. XXXII, r. 10*]

Sub-Rule (1) corresponds to Section 428 of the old Code. The wording in that Section was :—"On the death or removal of the next friend........"

Sub-Rule (2) reproduces Section 429 of the old Code.

11. (1) Where the guardian for the suit desires to retire or does not do his duty, or where other sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.

Retirement, removal or death of guardian for the suit.

(2) Where the guardian for the suit retires, dies or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place.

---

Or. XXXII, r. 11 [=Ss. 438, 439 = *Or. XXXII, r. 11*]

The corresponding Sections of the old Regulation were as follow :—

"438. *Guardian neglecting his duty may be removed.—Costs.*—If the guardian for the suit of a minor defendant does not do his duty, or if other sufficient ground be made to appear, the Court may remove him, and may order him to pay such costs as may have been occasioned to any party by his breach of duty."

"439. *Appointment in place of guardian dying* pendente lite.—If the guardian for the suit dies pending such suit, or is removed by the Court, the Court shall appoint a new guardian in his place."

**Case Law.**

It is well-settled that a minor can reopen a decree on the ground not alone of fraud, but also of gross negligence on the part of the guardian. Whether there has been gross negligence on the part of the guardian must necessarily depend upon the facts and circumstances of each case. Mere non-appearance at the trial would not amount to gross negligence if there was no good ground of defence to put forward on the minor's behalf but it would be gross negligence not to defend the suit if there was a *valid defence* available.

Though the failure of the person sought to be appointed guardian *ad litem* of a minor defendant to signify his willingness to act as guardian is only an irregularity which by itself would not vitiate the decree, the safer course, when the person sought to be appointed guardian *ad litem* does not appear and express his willingness to act as such, would be for the Court to see if there is any person other than the person nominated fit and willing to accept that office, and, if no such person can be found, to appoint any of its officers to be such guardian as directed in Section 436 [Rules 3 & 4]. In the case the 4th defendant accepted the office of plaintiff's guardian and filed a written defence. But she failed to file a further written statement when called upon by the Court, and the Court punished her under Section 108 [=Or. 8, r. 10] for non-compliance with the order of the Court *viz.*, by decreeing the suit. The question was whether the disobedience of the order of the Court could be visited with the penalty provided in Section 108 as against the minor. It is sufficiently clear from the language of the Section that the Legislature meant the provision to be used only very sparingly even as against the real offender. Much less could that provision be called to aid when the real party to a suit is a minor and the offender is the guardian. Section 438 expressly provides for cases where the guardian of a minor defendant does not do his duty.

**16 T. L. J., *369*.**

12. (1) A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall, on attaining majority, elect whether he will proceed with the suit or application.

Course to be followed by minor plaintiff or applicant on attaining majority.

(2) Where he elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name.

(3) The title of the suit or application shall in such case be corrected so as to read henceforth thus :—

"A. B., late a minor, by C. D., his next friend, but now having attained majority."

(4) Where he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite party or which may have been paid by his next friend.

(5) Any application under this Rule may be made *ex parte* : but no order discharging a next friend and permitting a minor plaintiff to proceed in his own name shall be made without notice to the next friend.

Or. XXXII, r. 12 (1) [=S. 430 =*Or. XXXII, r. 12 (1)*]
,, r. 12 (2) [=S. 431 =*Or. XXXII, r. 12 (2)*]
,, r. 12 (3) [=S. 431 =*Or. XXXII, r. 12 (3)*]
,, r. 12 (4) [= S. 432 =*Or. XXXII, r. 12 (4)*]
,, r. 12 (5) [=S. 433 =*Or. XXXII, r. 12 (5)*]

*Sub-Rule (1).*—Section 430 of the old Code was :—"430. A minor......is pending, on coming of age, must elect...application."

*Sub-Rules (2) & (3).*—Section 431 of the old Code was :-"431. If he elects to proceed with it, he shall apply......in his own name.

The title of the suit......his next friend, but now of full age."

*Sub-Rule (4).*—In place of the words "or opposite party", Section 432 of the old Code had the words "or respondent."

*Sub-Rule (5).*—Section 433 of the old Code was as follows :—

"433. *Making and proving application under Sections 431 and 432.*—Any application under Section 431 or Section 432 may be made *ex parte* ; and it must be proved by affidavit that the late minor has attained his full age."

**Case Law.**

The suit was instituted on behalf of a minor by her next friend. The minor came of age before the termination of the suit in the Court of first instance. She in her own name presented an appeal to the District Court against the decree of the original Court and applied for permission to conduct the appeal in her own name as contemplated by Section 431 of the Civil Procedure Code. The District Judge granted permission. It was contended in second appeal before the High Court on behalf of the defendant that as the plaintiff did not as soon as

Where minor co-plaintiff attaining majority desires to repudiate suit.

13. (1) Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

(2) Notice of the application shall be served on the next friend, on any co-plaintiff and on the defendant.

(3) The costs of all parties of such application and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

(4) Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant.

Unreasonable or improper suit.

14. (1) A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his name by his next friend be dismissed on the ground that it was unreasonable or improper.

---

she attained majority, apply under Section 431, for the discharge of her next friend and for leave to proceed with the suit in her own name, the suit should have been dismissed.

*Held.*—There had been no such material irregularity as had prejudiced the parties.

Although the minor became *sui juris* before the conclusion of the suit in the Court of first instance, she was not in any way prejudiced nor were her opponents prejudiced by not having her next friend struck off the record. Her conduct in appealing in her own name was of itself a sufficient indication of her election to adopt the work already done on her behalf in the suit by her next friend and the lower Appellate Court was therefore right in granting permission.— **29 T. L. R.**, *20* **(=3 T. L. J.**, *263*).

---

**Or. XXXII, r. 13** [=S. 434 =*Or. XXXII, r. 13*]

Section 434 of Regulation II of 1065 was as follows:—

"434. *When minor co-plaintiff coming of age desires to repudiate suit.*—A minor co-plaintiff on coming of age and desiring to repudiate the suit must apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

Notice of the application shall be served on the next friend as well as on the defendant, and it must be proved by affidavit that the late minor has attained his full age. The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

(2) Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit.

Application of Rules to persons of unsound mind.

15. The provisions contained in Rules 1 to 14, so far as they are applicable, shall extend to persons adjudged to be of unsound mind and to persons who though not so adjudged are found by the Court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued.

---

If the late minor be a necessary party to the suit, the Court may direct him to be made a defendant."

**Case Law.**

See Or. XXXII.—19 T. L. J., *1021.*

---

**Or. XXXII, r. 14** [=S. 435 = *Or. XXXII, r. 14*]

Section 435 of Regulation II of 1065 was as follows:—

"435. *When suit unreasonable or improper.*—If any minor on attaining majority can prove to the satisfaction of the Court that a suit instituted in his name by a next friend was unreasonable or improper, he may, if a sole plaintiff, apply to have the suit dismissed.

*Costs.*—Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application, and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit."

---

**Or. XXXII, r. 15** [= S. 443 = *Or. XXXII, r. 15*]

I. Section 443 of Regulation II of 1065 was as follows:—"443. The provisions contained in Sections 420 to 442 (both inclusive) shall, *mutatis mutandis*, apply in the case of persons of unsound mind."

II. The Rule reproduces the British Indian Rule in regard to which the Indian Special Committee said:—"The Committee have extended this rule so as to cover the case of a person incapacitated fram protecting his interests by reason of his mental weakness or of his being a deaf-mute."

**Case Law.**

A, a Nambudiri lady sued B on behalf of her minor son C, for recovery of land and rent. Her husband D was alive but was alleged to be of unsound mind. B objected to the right of C to carry on the suit during the life of D (C's father) in C's name.—

*Held.*—D the father of C (the minor) was, according to the law by which the Nambudiris were governed, the head of the Tarwad. Suits relating to Tarwad property must, therefore, be instituted in his name by his next friend or guardian; and there was no objection to A (D's wife and C's mother) acting as his next friend and guardian.

[The plaint was directed to be amended by bringing in the plaintiff's father as the plaintiff on the record, his wife acting as his next friend and guardian].—

7 T. L. R., *33.*

---

## ORDER XXXIII.

### Suits by Paupers.

Suits may be instituted *in forma pauperis*.

1. Subject to the following provisions, any suit may be instituted by a pauper.

*Explanation.*—A person is a "pauper" when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit.

---

Order XXXIII:—"The chief point to be noticed in this Order is that paupers are allowed to bring all suits, including suits for libel, loss of caste, and assault. There is no reason why paupers should not vindicate their character, or go without a civil remedy in cases of assault. Again, a pauper is not the less so, because he has in possession a sum of a hundred rupees or less. This maximum sum is sufficiently low. Lastly, questions arising between the Government and the plaintiff in respect of realising Court fee are subjected to appeal."
*Notes on Clauses.*

#### Case Law.

The Legislature contemplates two distinct stages in dealing with applications to sue *in forma pauperis*. The first stage may be taken to be that until the issue of a notice fixing a specified date for the hearing to the Government pleader and the opposite party. In this stage, the Court is empowered to examine the applicant or his agent as regards the applicant's pauperism and the merits of the claim. The examination contemplated at this stage is to ensure clearness or to ascertain definitely the facts necessary to apprize the Court of the exact nature of the right. After such an examination, the Court is empowered to reject the application if the prohibitions specified in Section 392 [Or. XXXIII, r. 5] are found to exist in the case.

The second stage commences with the issue of the notice to the other side and the Government pleader. In this stage, the Court is allowed to conduct an enquiry relating to the application and allow the parties to adduce such evidence as they may have in the matter. This enquiry has to be confined to the question of pauperism alone and not to the merits of the claim. After the enquiry is concluded, an opportunity is given to the counter-petitioner or the Sirkar to advance any argument that they may have for making out that the case falls within the provisions of Section 392 or Rule 5 of Order XXXIII. This could mean that they are given an opportunity to make out that from the plaint as drawn up considered along with the statement of the applicant or his agent recorded under Section 391 of the old Code or Rule 4 of Order XXXIII of the new Code, no cause of action is disclosed. For this purpose, the evidence recorded in the second stage could not be used as the same had to be confined to the question of pauperism alone.

'Cause of action' in Rule 5 of Order XXXIII means a good subsisting cause of action capable of enforcement in Court and calling for an answer, and not barred by the law of limitation or any other law.—
**19 T. L. J.,** *684.*

---

Or. XXXIII, r. 1 [ = S. 386
= *Or. XXXIII, r. 1*]

I. This Rule is the same as Section 386 of Regulation II of 1065. For the word "brought" in the old Section the word "instituted" is used.

II. 1. In the British Indian Code, the Explanation to this Rule which reproduces Section 401 of the 1882 Code, is as follows:- "*Explanation.*-A person is a "pauper" when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing apparel and the subject-matter of the suit."

This Explanation was adopted *in toto* in the original Bill; but the Select Committee deleted the words—"or where.........of the suit."

2. It may be noted here that, in the Statement of Objects and Reasons appended to the Bill which became Regulation II of 1065, it was stated :—"The latter part of the Explanation to Section 401 (Indian Code) is omitted, as it is likely to give room to unnecessary enquiries without adequate advantage."— *S. O & R., Para 60.*

III. (1) When a man seeks permission to sue as a pauper, the Court to whom the application is made is bound to investigate the merits of the claim. It is only after satisfying itself that the petitioner has a *prima facie* case against the defendants named in his plaint, that the claim is not barred by limitation and that the suit is one which a man may be allowed to institute as a pauper, the Court can proceed to enquire into his alleged pauperism and make a final order to allow or reject his application.

(2) The mere fact that a man was allowed to sue as a pauper is no ground to allow him to appeal as a pauper against the decree of the Court of first instance. The Appellate Court must see reason to believe that the decision of the Court below is contrary to law or is otherwise erroneous or unjust before granting the prayer to appeal *in forma pauperis.*

(3) The permission given to a man to sue or to appeal as a pauper, does not altogether exonerate him from the payment of institution fees. The permission has merely the effect of postponing the period of payment of the amount due to the Sirkar. If a pauper's claim is entirely disallowed, the decree ought to state the amount of the institution fee which he would have paid if he had not been permitted to sue as a pauper, and it ought to state that he is liable to pay the same to the Sirkar. If a pauper succeeds in his claim wholly or partially, the decree ought to state what amount of the institution fee the Sirkar is entitled to recover from defendant and what amount (if any) from the plaintiff.

(4) To enable the Government to recover the institution fee, it is necessary that the Courts should furnish the Government with copies of decrees in suits and appeals. (Civil Circular No. 3 of 1058).—

**2 T. L. R. App., 7.**

[ See also Rule 577 of the Civil Courts Guide.]

IV. An order of partial dispauperisation does not appear to be contemplated by the Code of Civil Procedure. The Code recognises no degrees in pauperism. A person is for the purposes of Chapter XXVI relating to pauper suits either a pauper or not a pauper. He is a pauper if he is unable to pay the fee prescribed for the suit that he proposes to institute, whatever may be extent of his inability. If his means do not enable him to pay the full fee, however small may be the amount required to make it up, he must be treated as a pauper for the purpose of Chapter XXVI of the Civil Procedure Code.— **16 T. L. J., 76.**

V. 1. After Section 386, there was the following Section in the old Regulation.

"387. *What suits excepted.*—No suit shall be brought by a pauper to recover compensation for loss of caste, libel, slander, abusive language or assault."

This has been omitted, as is done in the British Indian Code. For reasons, see Notes on Clauses above.

2. In regard to the omission of this provision in the Indian Code, the Special Committee said: —"The Committee have not preserved Section 402. In the light of the case-law it is misleading, so far as it suggests that a suit will lie for loss of caste or abusive language, and they can see no sufficient reason for witholding from a pauper a right to sue as such in respect of defamation or assault."

### Case Law.

1. The junior member of a Malabar family could not be allowed to sue as a pauper on behalf of his Tarwad the Tarwad itself not being insolvent.—**3 T. L. R., *103*.**

Fol.—4 T. L. J., 57.
Ref.—39 T. L. R., 272
(= 14 T. L. J., 299).
Dist.—25 T. L. R., 72.
30 T. L. R., 188
(= 4 T. L. J., 289).

2. Where a District Judge rejected an application to sue *in forma pauperis* on the ground that the applicant was entitled to a share in a large number of properties but was not in possession of the same, it appearing that these very properties formed the subject-matter of the suit :

*Held.*—The rejection of the application was improper. The only question that the Judge had to consider was whether the petitioner was in possession of sufficient means to enable him to pay the fees prescribed by law for the plaint in the suit.— **25 T. L. J., *72*.**

Appl.—30 T. L. R., 188
(= 4 T. L. J., 289).
Dist.—34 T. L. R., 178.
Con.—37 T. L. R., 188.
Ref.—39 T. L. R., 272
(= 14 T. L. J., 299).

3. Where certain junior members of a Marumakkathayam Tarwad applied under Section 386, C. P. C., for permission to sue *in forma pauperis* for maintenance and for setting aside certain improper alienations of the immovable properties of the Tarwad, and the Court of first instance while rejecting the application in so far as the second relief was concerned allowed it in regard to the first :

*Held* (confirming the order of the Court below).—The right to claim maintenance was a personal right, and as the plaintiffs were shown to be paupers they were rightly allowed to sue *in forma pauperis* in respect of that relief.

The right to set aside an improper alienation of Tarwad properties was a right claimed on behalf of the Tarwad, and as the Tarwad had not been shown to be a pauper within the meaning of Section 386, C. P. C., the plaintiff could not be allowed to seek that relief without payment of the necessary Court fee.

As the causes of action in respect of the two reliefs were distinct, there was nothing wrong in rejecting the application in respect of the one and allowing it in respect of the other.— **4 T. L. J., *57*.**

Ref.—39 T. L. R., 272
(= 14 T. L. J., 299).
30 T. L. R., 188
(= 4 T. L. J., 289).

4. Suit by junior members of a Nanjinad Vellala Tarwad following Marumakkathayam law to set aside on behalf of the Tarwad, a partition deed entered into during the plaintiff's minority by the other members of the Tarwad, and relating to all Tarwad properties. They also prayed for the setting aside of certain alienations before and after the partition and for the removal of the Karanavan from his office. They applied to file the suit *in forma pauperis*. The defendants contended, *inter alia*, that as the Tarwad on whose behalf the suit was

brought was not a pauper, the plaintiffs could not sue as a pauper. This contention was upheld by the Judge.

*Held.*—The examination of an applicant under Section 391 [= Or. XXXIII, r. 4] is only for the purpose of ascertaining whether the applicant's allegations show a cause of action and is not for the purpose of determining the claim on the merits.

All the Tarwad property having become the subject-matter of the suit, leave must be given to file the suit *in forma pauperis* on behalf of the Tarwad. 'The law does not compel suitors seeking to sue as paupers to mortgage their claims in order to pay Court fees.'— **30 T. L. R.**, *188* (**= 4 T. L. J.**, *289*).

Con.—37 T. L. R., 138.

**5.** An appeal was preferred by first defendant in the case against a decree for partition obtained by the plaintiffs-respondents, who had filed the suit *in forma pauperis.* The plaintiffs-respondents applied that the memorandum of objections filed by them might be allowed to be filed *in forma pauperis.*

*Held.*—The application could not be allowed. Firstly, there is no provision in the Civil Procedure Code covering such an application. Secondly, by reason of the decree passed in their favour by the lower Court, the plaintiffs had ceased to be paupers as understood in the Civil Procedure Code. Thirdly, supposing the application could be regarded as similar to an application for leave to appeal *in forma pauperis,* Section 561 [=Or. XLIII, r. 1] allows a party to appeal as a pauper, only if the judgment appealed against is *prima facie* contrary to law or is otherwise erroneous or unjust (F. B.).— **11 T. L. J.**, *1.*

**6.** Plaintiff applied to the District Court to admit his plaint in a suit for partition *in forma pauperis.* The defendants 1 to 3 are his brothers and the fourth his mother, while the other defendants 5 to 9 are the alienees under defendants 1 to 4. The plaintiff asserted that the family properties were worth about Rs. 50,000, that his share came to over Rs. 10,000, that he did not make any attempt to raise money by encumbering his share and that he was not willing to do so. The application was rejected and in revision:

*Held* (By a majority of the Full Bench, Mr. Justice Cheriyan dissenting).— The plaintiff was not a pauper within the meaning of Section 386 C. P. C.

*Per Viraraghava Aiyengar, C. J.*— Broadly speaking, the following classes of cases may arise in partition suits:—

(1) Whether the plaintiff's right to a share in the properties alleged to belong in common is undisputed.

(2) Where such right is disputed and disputed *bona fide, i. e.,* not in collusion with the plaintiff with a view to enable him to bring the suit *in forma pauperis.*

Class (1) may be sub-divided thus:—

(*a*) Where all the properties belonging to the plaintiff and the co-owners—defendants, or in which they are jointly interested, have been alienated away, and are in the possession of the alienees-defendants.

(*b*) Where such properties have been alienated only in part, the remaining portion continuing to be in possession of the co-owners-defendants.

Sub-clause (*b*) may be further sub-divided into—

(1) Where the plaintiff is by force or fraud or other improper means on the part of his co-owners-defendants and not by way of collusion, kept out of possession or otherwise prevented by his co-owners-defendants from exercising his right of co-ownership in regard to those properties which still remain as part of the family property or of the joint concern.

(2) Where there is no such prevention or keeping out as is referred to in Sub-clause (*b*) (1), but the plaintiff does not choose or is unwilling to exercise his rights as co-owner.

With respect to sub-clauses 1 (*a*), 1 (*b*) and (2), the plaintiff would *prima facie* be entitled, regard being had to the other provisions in the Civil Procedure Code bearing on the point, to ask the Court to allow him to sue as a pauper. As regards 1 (*b*) (2), there appears no reason founded in law or equity why the Court should, apart from the question of the sufficiency of the means, allow the plaintiff to sue as a pauper.

In my view, the word "possessed" in the phrase "possessed of means" occurring in the Section is not used in any technical sense. This phrase "possessed of means" should be, and was intended by the Legislature to be, understood in a popular sense.

The questions in each case for the Court to decide will be (1) whether having regard to all the circumstances and the evidence adduced before it on the point, the plaintiff may be reasonably considered to be a person owning or having anything which is marketable or can be converted into money, and (2) if the question is found in the affirmative, whether the amount which is so realisable would be sufficient to pay the fee prescribed by law.

*Per Palpu Pillai, J.*—The plaintiff does not say that the properties involved in the suit are beyond his reach. All that is stated is that defendants do not comply with his requisition for partition. This cannot be construed as meaning that the plaintiff is *kept out of possession* of his one-fourth share to which he is admittedly entitled The real object of the suit is not so much for the plaintiff's share being divided off from those of his brothers, as for having it declared that the encumbrances in favour of defendants 5 to 9 are not valid in so far as the plaintiff's share is concerned. All the properties are presumably in the possession of the family composed of the plaintiff and his brothers, and the latter have not come forward to dispute or question the title set up by plaintiff.

*Per Cheriyan, J.* (dissenting).—Under Section 393 [=Or. XXXIII, r. 5], all that the Court has to decide is whether the plaintiff is possessed of sufficient means and not whether he is in a position to raise funds for paying the court fee. The measure of pauperism is the sum required to pay the fee on the plaint. If the petitioner is proved to have this sum at his disposal, he is not allowed the privilege of pauperism. The real ground for excluding the subject-matter of the suit is because it is presumably out of the petitioner's reach and cannot be made use of by him to carry on his litigation.

In this case the plaintiff is according to him legally entitled to a share in the plaint items. But so long as he is kept out of his share, in spite of the fact of his being legally entitled to it, the plaint property cannot be said to be at the plaintiff's disposal, so as to justify a finding that he is possessed of sufficient means to pay court fee. It cannot be said that simply because the plaintiff in a pauper suit includes an item of property in the schedule to his proposed plaint, that property should be regarded as the subject-matter of the litigation. But where it is sought to make out that what the plaintiff claims in the suit as being in the possession of the defendant is really in the plaintiff's possession the clearest evidence should be adduced.

In this case there is no allegation or finding that any of the plaint properties is at the plaintiff's disposal or in his possession. The plaintiff's application for leave to sue *in forma pauperis* cannot be disposed of without a finding on this question.

There is no duty imposed on the plaintiff to raise funds by mortgaging the subject-matter of the litigation.— **37 T. L. R.**, ***138.***

***7.*** A junior member of a Marumakkathayam Tarwad, who has no funds of his

Contents of application.

2. Every application for permission to sue as a pauper shall contain the particulars required in regard to plaints in suits: a schedule of any movable or immovable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

Presentation of application.

3. Notwithstanding anything contained in these Rules, the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court, in which case the application may be presented by an authorised agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

---

own, can be allowed to sue *in forma pauperis* for the removal of the Karanavan from his office and for setting aside the alienations of Tarwad properties, although the Tarwad may be possessed of sufficient properties other than those directly involved in the suit (F. B.).—

**39 T. L. R.,** *272*
(= **14 T. L. J.,** *399*).

**8.** See also—
Sec. 89.— **34 T. L. R.,** *178.*

**Or. XXXIII, r. 2** [ = S. 388
= *Or. XXXIII, r. 2* ]

**Case Law.**

The lower Court allowed the plaintiffs to sue *in forma pauperis*. The defendant preferred the revision and contended that the order of the lower Court was wrong inasmuch as there was no separate application for leave to sue *in forma pauperis*.

*Held,*—As all the particulars required to be specified in the plaint had been set forth and a statement made at the foot thereof that plaintiffs were not possessed of any properties, movable or immovable, and that therefore permission should be accorded for suing *in forma pauperis*, and especially as the verification required by law had been made in the petition in the paper so put in, there was sufficient compliance with the requirements of Rule 2 of Order XXXIII.—

**19 T. L. J.,** *1322.*

**Or. XXXIII, r. 3** [ = S. 389
= *Or. XXXIII, r. 3* ]

**Case Law.**

1. Under Order XXXIII, Rule 3, in all cases which do not fall under the exception provided for, an application for permission to sue as a pauper has to be made by the applicant in person. Where more persons than one have joined in such application, it has to be presented by all of them and presentation of the same by some of the applicants without the others should not be recognised. The provision is imperative.

Where all the members of a Tarwad institute a suit, of whom the first plaintiff is the Karanavan and where the suit can be maintained by the Karanavan by himself

4. (1) Where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the applicant, or his agent when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

Examination of applicant.

(2) Where the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken.

If presented by agent, Court may order applicant to be examined by commission.

5. The Court shall reject an application for permission to sue as a pauper—

Rejection of application.

(a) where it is not framed and presented in the manner prescribed by Rules 2 and 3, or

(b) where the applicant is not a pauper, or

(c) where he has, within two months next before the presentation of the application disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper, or

(d) where his allegations do not show a cause of action, or

(e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter.

---

without the junction of the junior members, the presentation of the application to admit the suit *in forma pauperis* without the presence of the junior members the coplaintiffs may be taken to be substantial compliance with the provisions of Order XXXIII, Rule 3.— **19 T. L. J.,** *402.*

**2.** See also—

Or. XXXIII, r. 7.—**16 T. L. J.,** *430.*

,, r. 15.—**19 T. L. J.,** *1225.*

**Or. XXXIII, r. 4** [= S. 391 = *Or. XXXIII, r. 4*]

**Case Law.**

See—

Or. XXXIII.—**19 T. L. J.,** *684.*

,, r. 1.—**30 T. L. R.,** *188* (=**4 T. L. J.,** *289*).

,, r. 7.— **38 T. L. R.,** *27* (=**12 T. L. J.,** *248*).

**Or. XXXIII, r. 5** [=Ss. 390, 392 = *Or. XXXIII, r. 5*]

1. Clause (a) is the same as Section 390 of the old Code,

6. Where the Court sees no reason to reject the application on any of the grounds stated in Rule 5, it shall fix a day (of which at least ten days' clear notice shall be given to the opposite party and the Government pleader) for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

Notice of day for receiving evidence of applicant's pauperism.

7. (1) On the day so fixed or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) on either side, and may examine the applicant or his agent, and shall make a memorandum of the substance of their evidence.

Procedure at hearing.

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in Rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as a pauper, or direct that the application be filed as a plaint on the applicant paying the requisite court-fee within such time as the Court may allow.

---

**II.** The remaining Clauses correspond to Section 392 which was as follows :—

"392. *Rejection of application.*—If it appear to the Court—

(*a*) that the applicant is not a pauper, or

(*b*) that he has, within the two months next before the presentation of the application, disposed of any property fraudulently or with a view to obtain the benefit of this Chapter, or

(*c*) that his allegations do not show a right to sue, or

(*d*) that he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter,

the Court shall reject the application."

**Case Law.**

1. There is no appeal allowed against an order refusing a pauper applicant to sue *in forma pauperis*.— **1 S. D.,** *285*.

2. See also—

Or. XXXIII,— **19 T. L. J.,** *684*.

" r. 1 —**30 T. L. R.,** *188* (=**4 T. L. J.,** *289*). **37 T. L. R.,** *138*.

" r. 7.—**16 T. L. J.,** *430*.

**Or. XXXIII, r. 6** [=S. 393 =*Or. XXXIII, r. 6*]

I. Section 393 of the old Code had the word "refuse" in the place of "reject," and "ten days' previous notice" in the place of "ten days' clear notice."

II. For Form of Notice to opposite party of day fixed for hearing evidence of pauperism, see Appendix I, Form No. 12.

**Case Law.**

See Or. XXXIII, r. 7.—**38 T. L. R.,** *27* (=**12 T. L. J.,** *248*).

**Or. XXXIII, r. 7 [= S. 394 =*Or. XXXIII, r. 7*]**

I. The original Bill reproduced Section 394 of Regulation II of 1065 which was the same as Section 409 of the Indian Code of 1882 now adopted as Rule 7 of the present Indian Code. The Select Committee substituted in Sub-Rule (1), the words "on either side" for the words "produced by either party", and in Sub-Rule (3) added at the end the words—"or direct that the application.........may allow."

II. In the Statement of Objects and Reasons appended to the 1901 Bill to amend the Indian Civil Procedure Code, the following occurs in reference to Section 409 of the 1882 Code :—"In the second place, the opportunity has been taken to embody the decision in Skinner v. Orde (1879), L. R. 6. I. A. 126, to the effect that in the absence of fraud, an applicant may abandon his prayer to bring a suit as a pauper and, by paying the court-fees, convert his petition into a plaint, operating, for purposes of limitation, from the date of filing and not from that of the payment of court-fees."

Agreeably to the above, the 1901 amending Bill contained a Sub-section to Section 409 which, amended by the Select Committee, stood as follows :—"Where an application has been made for permission to institute a suit as a pauper, the applicant may, at any time before an order is made under this Section, convert his application into a plaint, by paying into Court the necessary court-fees, and, unless the Court, for reasons to be recorded considers the application to have been made in bad faith, such plaint shall, for the purposes of the law of limitation for the time being in force, be deemed to have been presented on the day on which the application was made and not on the day on which the court-fees are paid."

**Case Law.**

**1.** An order granting or refusing permission to sue *in forma pauperis* is final and not open to appeal.— **7 T. L. R. App., *54*.**

**2.** The examination of the petitioner contemplated by Section 391, C. P. C. [=Or. XXXIII, r. 4] is simply for the purpose of ascertaining whether the allegations in the petition disclosed or not a right to sue. It is not competent for the Court at that stage to enter into the merits of the proposed suit.

The evidence recorded under Section 394, C. P. C., is in relation to the matter on which evidence is authorised to be adduced by Section 398, C. P. C., [= Or. XXXIII, r. 6 ] and should be confined to the petitioner's pauperism and not extended to the merits of the case. If the allegations made by the applicant show a good cause of action, and if he is found to be a pauper, the fact that the allegations are traversed by the opposite party is immaterial and the application should be allowed.
**38 T. L. R., *27***
**(= 12 T. L. J., *348*).**

**3.** It was contended that it was not competent to the Court to reject an application for permission to sue *in forma pauperis* under Section 390 [= Or. XXXIII, r. 5 ], after it had once begun to take evidence under Section 394.

***Held.***—There was no restriction to the Court's power to reject the application at any stage if it was found that the provisions of Sections 388 and 389 [=Or. XXXIII, rr. 2 and 3] had not been complied with.—
**16 T. L. J., *480*.**

**4.** See also—

Or. IX, r. 9.— **13 T. L. J., *383*.**
,, XXXIII, r. 15.—**19 T. L. J., *1995*.**

Procedure if application admitted.

8. Where the application is granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

Dispaupering.

9. The Court may, on the application of the defendant, or of the Government pleader of which seven days' clear notice in writing has been given to the plaintiff order the plaintiff to be dispaupered—

(a) if he is guilty of vexatious or improper conduct in the course of the suit;

(b) if it appears that his means are such that he ought not to continue to sue as a pauper; or

(c) if he has entered into any agreement with reference to the subject-matter of the suit under which any other person has obtained an interest in such subject-matter.

---

Or. XXXIII, r. 8 [= S. 395 =*Or. XXXIII, r. 8*]

Or. XXXIII, r. 9 [= S. 399 =*Or. XXXIII, r. 9*]

**Case Law.**

1. The language employed in Clause (*b*), Section 399 of the C. P. C., appears to show that in order that that provision may be successfully invoked, the applicant should prove that subsequent to the date of the order admitting the plaint *in forma pauperis*, there has been a change in the circumstances of the counter-petitioner or that any item of property which was then considered as of no value had, by change of circumstances, become valuable and marketable or that some item of property has since been discovered as belonging to the plaintiff counter-petitioner and that that property was available to him for payment of Court fees or some other similar fact (F. B.).—

37 T. L. R., *102* (=11 T. L. J., *300*).

2. Where the plaintiffs who have instituted the suit as paupers transfer the suit properties after the suit is decreed *ex parte*, such transfer does not become a transaction falling under Clause (*a*) or Clause (*c*) of Section, 399 C. P. C., by reason of the *ex parte* decree having been vacated. Transfer could not affect the Sirkar, as their rights are sufficiently protected by the first charge given to them by Section 396 [Rule 10].—

16 T. L. J., *76*.

10. Where the plaintiff succeeds in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; such amount shall be recoverable by the Government from any party ordered by the decree to pay the same, and shall be a first charge on the subject-matter of the suit.

Costs where pauper succeeds.

---

Or. XXXIII, r. 10 [=S. 396 =*Or. XXXIII, r. 10*]

The latter part of Section 396 of the old Regulation was as follows:—"and such amount shall be a first charge on the subject-matter of the suit, and shall also be recoverable by the Government from any party ordered by the decree to pay the same, in the same manner as costs of suit are recoverable under this Code."

**Case Law.**

**1.** Government has power to recover the institution fees, in a pauper suit from the unsuccessful defendant independently of plaintiff; but a subsequent reversal of the original decree, on appeal, makes the Government liable to refund the fees so recovered.

The Court to which a decree in a pauper suit is transferred for execution, has power to decide questions relating to the recovery of institution fees.— **5 T. L. R. App.**, *12.*

**2.** Where the plaintiffs when minors sued by their next friend *in forma pauperis* and the decree therein ordered the recovery of costs on a certain amount from the plaintiffs, the Sirkar in execution for costs attached the properties of the minors and then sought to execute the decree against their person. The plaintiffs contended that the decree was fraudulent. The lower Court held that the right to impeach the decree was barred and that they were personally liable. On appeal by the plaintiffs, the lower Court's order was reversed on the following findings :—

Though there is no express protection for minors from arrest under the Civil Procedure Code, it is necessarily implied. As the Criminal law declines to hold a minor below the age of seven responsible for his actions, it will be anomalous if there be nothing to prevent that same child being retrospectively made liable when he became *sui juris* for a civil liability.

*Per T. Sadasiva Iyer, C. J.*—Though the plaintiffs are now majors they were minors when the decree was passed. C. P. C. Section 420 [=Or. XXXII r. 1] does not mean that the minor plaintiff can also be made personally liable, but that the next friend shall not be liable usually, that the minor's estate should be usually made liable if the next friend had not acted very negligently or fraudulently and that in exceptional cases, however, the next friend can be made liable.

It is doubtful from the wording of Section 422, C. P. C., [=Or. XXXII, r. 2] whether, even in the case of a suit by a minor knowingly suing as a major, he can be made personally liable for costs and whether the pleader or other person who presents the plaint is not alone liable for the same.

The whole law of arrest of debtors arose out of the ancient vindictive views as to the debtor, the person having to be placed as a slave at the disposal of the creditor until the debt is discharged by service.— **K. P.**, *455.*

**3.** Where, on appeal from the decree in a pauper suit, the plaintiff has substantially succeeded, the Appellate Court simply directed by its decree that the Court fee payable by the plaintiffs should be made a charge on the subject-matter of the suit. In execution of this appellate decree, the Sirkar

11. Where the plaintiff fails in the suit or is dispaupered, or where the suit is withdrawn or dismissed,—

Procedure where pauper fails.

(a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, or

(b) because the plaintiff does not appear when the suit is called on for hearing,

the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper.

---

proceeded to recover the Court-fees personally from the first plaintiff. The latter objected, but his objections were overruled by the execution Court. The first plaintiff appealed from the above order.

*Held*.—As the plaintiffs had substantially succeeded in appeal, it was not obligatory on the Appellate Court to have directed them to pay the institution fees personally and, therefore, in the face of the appellate decree, the Sirkar should not recover the same from the plaintiffs personally.

The phrases "success" and "failure" in relation to a suit were used in Sections 396 and 397 C. P. C., [=r. 11], not as mere opposite terms, but as contradictories. "Failure" was a universal and not a particular negative of success. Any medium of success would prevent the result of a suit from being a failure within the meaning of Section 397. An entire absence of success would be a failure. When a suit is compromised, the plaintiff cannot be said to have failed within the meaning of the Section. The fact that he has obtained an agreement which he is willing to accept, prevents the result of his suit from depriving him entirely of all success. But if there is absolutely nothing gained by the suit so that the result is to leave the plaintiff in *statu quo ante*, or as in this case, by reason of his liability to pay costs, in a worse position, it would be a strain of language to say that the plaintiff had obtained any success of any kind or degree by his suit.—

**38 T. L. R.,** *277.*

4. See also—
Or. XXI, r. 50.—**18 T. L. R.,** *3.*

---

**Or. XXXIII, r. 11** [ = S. 397
= *Or. XXXIII, r. 11* ]

Section 397 of Regulation II of 1065 was as follows :—

"397. *Procedure when pauper fails.*—If the plaintiff fails in the suit, or if he is dispaupered, or if the suit is dismissed under Section 91 or 92, the Court shall order the plaintiff, or any person made under Section 28 co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper;

and if it find that the suit was frivolous or vexatious, it may also punish the plaintiff with fine not exceeding one hundred rupees, or with imprisonment for a term which may extend to a month, or with both."

12. The Government shall have the right at any time to apply to the Court to make an order for the payment of court-fees under Rule 10 or Rule 11.

Government may apply for payment of court-fees.

13. All matters arising between the Government and any party to the suit under Rule 10, Rule 11 or Rule 12 shall be deemed to be questions arising between the parties to the suit within the meaning of Section 40.

Government to be deemed a party.

14. Where an order is made under Rule 10, Rule 11 or Rule 12, the Court shall forthwith cause a copy of the decree to be forwarded to the Government Pleader.

Copy of decree to be sent to Government Pleader.

15. An order refusing to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by the Government and by the opposite party in opposing his application for leave to sue as a pauper.

Refusal to allow applicant to sue as pauper to bar subsequent application of like nature.

---

**Case Law.**

1. A wife sued her husband for maintenance past and future. The trial Court awarded her maintenance at a certain rate and declined to award past maintenance. She filed an appeal *in forma pauperis.* In appeal, the appellant and respondent compromised their disputes. The question arose as to who should be made liable for the payment of court-fees to the Sirkar.

*Held.*—The plaintiff is liable to pay the court fee, as she must be deemed to be a person "who fails in the suit" within the meaning of the expression as used in Order XXXIII, Rule 11, which applies to appeals also (F. B.).— **19 T. L. J., 991.**

2. See also—

Or. XXXIII, r. 10.—
**5 T. L. R. App., 12.**
**38 T. L. R., 877.**

---

O. XXXIII, r. 12 [= „
=*Or. XXXIII, r. 12*]

Or. XXXIII, r. 13 [= „
=*Or. XXXIII, r. 13*]

Or. XXXIII, r. 14 [= „
=*Or. XXXIII, r. 14*]

Or. XXXIII, r. 15 [= S. 398
=*Or. XXXIII, r. 15*]

Section 398 of Regulation II of 1065 was:—
"An order of refusal made under Section 394 to allow the applicant.........the costs (if any) incurred by the opposing party or Government in opposing his application for leave to sue as a pauper."

**Case Law.**

The petitioner put in an application for permission to sue as a pauper. The Court ordered notice. Subsequently, it was found that the application was not personally

Costs.

16. The costs of an application for permission to sue as a pauper and of an inquiry into pauperism shall be costs in the suit.

---

## ORDER XXXIV.

### Interpleader.

Plaint in interpleader suit.

1. In every suit of interpleader the plaint shall, in addition to the other statements necessary for plaints, state—

(a) that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs;

(b) the claims made by the defendants severally; and

(c) that there is no collusion between the plaintiff and any of the defendants.

Payment of thing claimed into Court.

2. Where the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff may be required to so pay or place it before he can be entitled to any order in the suit.

---

presented to Court as required by Order XXXIII, Rule 3, and hence it was rejected under Rule 7. The petitioner filed another application and this was rejected on the ground that it was barred under Rule 15.

*Held.*—The order rejecting the first application did not operate as a bar. If the application had been rejected before notice, the petitioner could have filed a fresh application. It was the duty of the Court to have seen whether there were any formal defects before notice was issued on the application. It was unjust that the applicant should be put in a worse position by reason merely of the Court having failed to do its duty.— **19 T. L. J., *1325.***

---

**Or. XXXIII, r. 16** [=S. 400 =*Or. XXXIII, r. 16*]

In Section 400 of the old Regulation, the wording at the end is:—"pauperism are costs in the suit."

---

**Or. XXXIV, r. 1** [=S. 450 =*Or. XXXIV, r. 1*]

Section 450 of Regulation II of 1065 was as follows:—"450. In every suit of interpleader the plaint must, in addition......... state—

(a) that the plaintiff has no interest in the thing claimed otherwise than as a mere stake-holder,

(b) the claims.........and

(c) that there is no.........defendants."

**Case Law.**

See Sec. 68.—**28 T. L. R., *4*** (= **2 T. L. J., *451***)

---

**Or. XXXIV, r. 2** [=S. 451 = *Or. XXXIV, r. 2*]

Section 451 of the old Regulation was as follows:—"451. When the thing claimed ........, the plaintiff must so pay or place it before he can be entitled to any order in the suit."

Procedure where defendant is suing plaintiff.

3. Where any of the defendants in an interpleader suit is actually suing the plaintiff in respect of the subject-matter of such suit, the Court in which the suit against the plaintiff is pending shall, on being informed by the Court in which the interpleader-suit has been instituted, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if, and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

Procedure at first hearing.

4. (1) At the first hearing the Court may—

(a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit; or

(b) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit.

(2) Where the Court finds that admissions of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed.

(3) Where the admissions of the parties do not enable the Court so to adjudicate, it may direct—

(a) that an issue or issues between the parties be framed and tried, and

(b) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff,

and shall proceed to try the suit in the ordinary manner.

---

**Case Law.**

See Sec. 68.—**28 T. L. R., *4* (= 2 T. L. J., *451*).**

---

**Or. XXXIV, r. 3** [=S. 455 = *Or. XXXV, r. 3*].

I. In regard to Rule 3 of the British Indian Code which is reproduced here, the Indian Special Committee say—"The Committee think that the institution of the interpleader suit affords a sufficient reason for the stay of other litigation in reference to the same subject-matter, and they have modified Section 476 to give effect to this view."

II. Section 455 of Regulation II of 1065 was as follows:—

"455. *Procedure where defendant is suing stake-holder.*—If any of the defendants in an interpleader-suit is actually suing the stakeholder in respect of the subject of such suit, the Court in which the suit against the stakeholder is pending

5. **Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.**

Agents and tenants may not institute interpleader-suits.

## *Illustrations.*

(*a*) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A and claims them from B. B cannot institute an interpleader suit against A and C.

(*b*) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for the debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader suit against A and C.

---

shall, on being duly informed, by the Court which passed the decree in the interpleader-suit in favour of the stakeholder that such decree has been passed, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if, and so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit."

**Or. XXXIV, r. 4** (1) & (2) [= S. 452 = *Or. XXXV, r. 4* (1) & (2)

„ r. 4 (3) [= „ = *Or. XXXV, r. 4* (3) = En. Or. 57 r. 7.

I. Section 452 of Regulation II of 1065 was as follows:—

"452. At the first hearing, the Court may—

(*a*) declare.........from the suit; or, if it thinks that justice or convenience so requires,

(*b*) retain all parties until the final disposal of the suit; and, if it finds that the admission of the parties or other evidence enable it,

(*c*) adjudicate the title to the thing claimed; or else it may

(*d*) direct the defendants to interplead one another by filing statements and entering into evidence for the purpose of bringing their respective claims before the Court, and shall adjudicate on such claims."

II. Rule 7 of Order LVII of the Rules of the Supreme Court, 1883, is as follows:—

"7. If the claimants appear in pursuance of the summons, the Court or a Judge may order either that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff, and which defendant."

### Case Law.

See Sec. 68.—**28 T. L. R.**, *4* (= **2 T. L. J.**, *451*).

**Or. XXXIV, r. 5** [= S. 453 = *Or. XXXV, r. 5*]

Charge for plaintiff's costs.

6. Where the suit is properly instituted, the Court may provide for the costs of the original plaintiff by giving him a charge on the thing claimed or in some other effectual way.

---

## ORDER XXXV.

### Special Case.

Power to state case for Court's opinion.

1. (1) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,—

(*a*) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them; or

(*b*) some property, movable or immovable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(*c*) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

(2) Every case stated under this Rule shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby.

---

**Or. XXXIV, r. 6** [ = S. 454
= *Or. XXXV, r. 6* ]

The wording in Section 454 of the old Code is :—

"When the suit......may provide for the plaintiff's costs by giving......effectual way."

**Order XXXV**: This Order corresponds to Chapter XXXVII of Regulation II of 1066, of which the heading was "Of proceedings on agreement of parties."

**Or. XXXV, r. 1** [ = S. 506
= *Or. XXXVI, r. 1* ]

The para in Section 506 of the old Regulation corresponding to Sub-Rule (2) is :—

"Every case stated.........concisely state such facts and documents as may be.........raised thereby."

Where value of subject-matter must be stated.

2. Where the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference shall be stated in the agreement.

Agreement to be filed and registered as suit.

3. (1) The agreement, if framed in accordance with the Rules hereinbefore contained, may be filed, in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

(2) The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or the others of them as defendant or defendants; and notice shall be given to all the parties of the agreement, other than the party or parties by whom it was presented.

Parties to be subject to Court's jurisdiction.

4. Where the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court and shall be bound by the statements contained therein.

Hearing and disposal of case.

5. (1) The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of this Code shall apply to such suit so far as the same are applicable.

(2) Where the Court is satisfied, after examination of the parties, or after taking such evidence as it thinks fit,—

(*a*) that the agreement was duly executed by them,

(*b*) that they have a *bona fide* interest in the question stated therein, and

---

Or. XXXV, r. 2 [= S. 507
= *Or. XXXVI, r. 2*]

Or. XXXV, r. 3 [= S. 508
= *Or. XXXVI, r. 3*]

In the second para in Section 508 of the old Regulation, the word "to" occurs in place of "of" after the words "all the parties."

Or. XXXV, r. 4 [= S. 509
= *Or. XXXVI, r. 4*]

Or. XXXV, r. 5 [= S. 510
= *Or XXXVI, r. 5*]

(c) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow.

---

## ORDER XXXVI.

### Arrest and Attachment before Judgment.

*Arrest before Judgment.*

Where defendant may be called upon to furnish security for appearance.

1. Where at any stage of a suit, other than a suit of the nature referred to in Section 15, clauses (*a*) to (*d*), the Court is satisfied, by affidavit or otherwise,—

(*a*) that the defendant, with intent to delay the plaintiff or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him,—

(i) has absconded or left the local limits of the jurisdiction of the Court, or

(ii) is about to abscond or leave the local limits of the jurisdiction of the Court, or

(iii) has disposed of or removed from the local limits of the jurisdiction of the Court his property or any part thereof, or

---

In Section 510 of the old Regulation, the following words occur at the end after the words "shall follow" :—"and shall be enforced in the manner provided in this Code for the execution of decrees."

---

**Order XXXVI**: "The change in this Order that calls for notice is the omission of the existing provision for the examination of the applicant. The existing provision is deemed to make it obligatory on the Court to examine the applicant. So to fetter the powers of the Court is not desirable, and ample powers are given to examine the applicant or not as the Court may deem fit.

Another change that is proposed to be effected is to exempt agricultural produce of an agriculturist from attachment before judgment."— *Notes on Clauses.*

---

**Or. XXXVI, r. 1** [= Ss. 456, 457 = *Or. XXXVIII, r. 1*]

I. The corresponding Sections of Regulation II of 1065 were as follow :—

"456. *When plaintiff may apply that security be taken.*—If, at any stage of any

(b) that the defendant is about to leave Travancore under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance :

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim, and such sum shall be held in deposit by the Court until the suit is disposed of or until the further order of the Court.

---

suit other than a suit for the possession of immovable property, the plaintiff satisfies the Court by affidavit or otherwise—

that the defendant, with intent to avoid or delay the plaintiff, or to avoid any process of the Court, or to obstruct or delay the execution of any decree that may be passed against him,

(a) has absconded or left the jurisdiction of the Court, or

(b) is about to abscond or to leave the jurisdiction of the Court, or

(c) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

that the defendant is about to leave Travancore under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the plaintiff may apply to the Court that security be taken for the appearance of the defendant to answer any decree that may be passed against him in the suit."

"457. *Order to bring up defendant to show cause why he should not give security.*—If the Court, after examining the applicant, and making such further investigation as it thinks fit, is satisfied—

that the defendant, with any such intent as aforesaid,

(a) has absconded or left the jurisdiction of the Court, or

(b) is about to abscond or to leave the jurisdiction of the Court, or

(c) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

that the defendant is about to leave Travancore under the circumstances last aforesaid,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance."

II. For Form of Warrant of arrest before judgment, see Appendix F, Form No. 1.

### Case Law.

Where the liability of the revision petitioner who stood surety for the production of the 2nd defendant during the pendency of the suit, was discharged by the Munsiff's

2. (1) Where the defendant fails to show such cause, the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to the last preceding Rule.

Security.

(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

3. (1) A surety for the appearance of a defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

Procedure on application by surety to be discharged.

(2) On such application being made, the Court shall summon the defendant to appear or, if it thinks fit, may issue a warrant for his arrest in the first instance.

(3) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

---

first judgment which dismissed the suit against the 2nd defendant, but the Munsiff subsequently on a review altered the original judgment by making 2nd defendant liable and also by reviving the original liability of the petitioner as surety without hearing him:

*Held.*—As the petitioner's discharged liability as surety could not be revived by the Munsiff on admitting a review out of the ordinary course and granting it behind the petitioner's back, the Munsiff's order against the petitioner in the 2nd judgment should be set aside.— **K. P.**, *99.*

**Or. XXXVI, r. 2** [=S. 458 =*Or. XXXVIII, r. 2*]

**I. 1.** In the first para of Section 458 of the old Regulation, corresponding to Sub-Rule (1), "execution or" occurs before the word "satisfaction."

The words occurring after the words "in the suit" in Sub-Rule (1) "or make such order......last preceding rule"—are new.

**2.** The second para of the Section corresponding to Sub-Rule (2) was as follows:—"The surety shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit."

**II.** For Form of security for appearance of defendant arrested before judgment, see Appendix F, Form No. 2.

**Case Law.**

See—

Sec. 109.—**43 T. L. R.**, *423.*

Or. XXXVI, r. 1.—**K. P.**, *99.*

Procedure where defendant fails to furnish security or find fresh security.

4. (1) Where the defendant fails to comply with any order under Rule 2 or Rule 3, the Court may commit him to the civil prison until the decision of the suit or, where a decree is passed against the defendant, until the decree has been satisfied :

Provided that no person shall be detained in prison under this Rule in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees :

Provided also that no person shall be detained in prison under this Rule after he has complied with such order.

(2) The provisions of Order XXI, Rule 37, as to allowances payable for the subsistence of judgment-debtors shall apply to all defendants arrested under this Order.

*Attachment before Judgment.*

Where defendant may be called upon to furnish security for production of property.

5. (1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,—

(*a*) is about to dispose of the whole or any part of his property, or

---

**Or. XXXVI, r. 3** [ = S. 459 =*Or. XXXVIII, r. 3*]

For Form of Summons to defendant to appear on surety's application for discharge, see Appendix F, Form No. 3.

---

**Or. XXXVI, r. 4** [=Ss. 460, 461 =*Or. XXXVIII, r. 4*]

I. 1. The main para in Section 460 of the old Regulation corresponding to Sub-Rule (1) was as follows :—"If the defendant fail to comply..........the decision of the suit or, if judgment be given against the defendant, until the execution of the decree:" There is no change in the Provisos.

2. Sub-Rule (2) is the same as Section 461 of the old Regulation. This Section was omitted in the original Bill, but was restored and added as a Sub-Rule by the Select Committee. Section 482 of the British Indian Code of 1882 which contained provision for payment of subsistence allowance to defendants, has been omitted in the existing Code in view of the insertion of a new Section (134) in the body of that Code, applicable to all persons arrested under the Code. See Section 99 *Supra.*

II. For Form of Order for Committal, see Appendix F, Form No. 4.

---

**Or. XXXVI, r. 5** [= Ss. 462, 463 =*Or. XXXVIII, r. 5*]

I. 1. This Rule incorporates, with modifications, Sections 462 and 463 of the old Regulation, which were as follow :—

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, or

(c) has quitted the jurisdiction of the Court leaving therein property belonging to him,

the Court may direct the defendant, within a time to be fixed by it, either to furnish security in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same or such protion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

---

"462. *Application before judgment for security from defendant to satisfy decree, and in default, for attachment of property.*—If, at any stage of any suit, the plaintiff satisfies the Court by affidavit or otherwise that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,

(a) is about to dispose of the whole or any part of his property, or to remove the same from the jurisdiction of the Court in which the suit is pending, or has concealed any part of his property, or

(b) has quitted the jurisdiction of the Court, leaving therein property belonging to him,

the plaintiff may apply to the Court to call upon the defendant to furnish security to satisfy any decree that may be passed against him in such suit and on his failing to give such security, to direct that any portion of his property within the jurisdiction of the Court shall be attached until the further order of the Court.

*Contents of application.*—The application shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof."

"463. *Court may call on defendant to furnish security or show cause.*—If the Court, after examining the applicant and making any further investigation which it thinks fit, is satisfied that the defendant is about to dispose of or remove his property or has concealed any part of his property with intent to obstruct or delay the execution of any decree that may be passed against him in the suit, or that he has, with such intent, quitted the jurisdiction of the Court, leaving therein property belonging to him, the Court may require him, within a time to be fixed by the Court, either to furnish security in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required,

the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

The Court may also in the order direct the conditional attachment of the whole or any portion of the property specified in the application."

2. Section 484 of the Indian Code of 1882 did not contain the words 'or has concealed any part of his property' found in the corresponding Section 468 of the Regulation. They were added, "fraudulent concealment of property being a proper ground for calling upon the defendant to find security."— *S. O & R., Para 65.*

II. *Sub-Rule (1).*—Clause (*c*) was not in the original Bill. It was added by the Select Committee who said that "the change was made to restore the existing provision." Barring Clause (*c*), the Rule, with the three Sub-Rules, is the same as the corresponding Rule in the British Indian Code.

III. In regard to the omission of the words "property within the jurisdiction of the Court" which occurred in the penultimate para of Section 483 of the old Indian Code (see Section 462 of the old Regulation above), the Indian Special Committee said:—

"The Committee have omitted the words 'property within the jurisdiction of the Court,' as they have caused a conflict of decision; and they think, as a matter of policy, there should not be the restriction these words suggest."

IV. For Form of Attachment before judgment, with Order to call for security, see Appendix F, Form No. 5.

For Form of Security for the production of property, see Appendix F, Form No. 6.

### Case Law.

1. The examination of plaintiff is obligatory before the granting of an order for attachment before judgment, even though he has filed an affidavit.— **26 T. L. R.,** *72.*

2. The jurisdiction given to Civil Courts to attach before judgment should be exercised with great discretion and no Court should grant such an attachment on light grounds or unless it is perfectly satisfied by trustworthy evidence that the defendant is about to dispose of his property or to remove it from the jurisdiction of the Court. In all applications for attachment before judgment, there must be *uberrima fides* on the part of the plaintiff and where the most perfect good faith is wanting, the application should be rejected.

An order directing conditional attachment should not be passed as a matter of course. Section 463 C. P. C., no doubt gives discretion to order a conditional attachment, but the order should show that the discretion has been properly and judicially exercised.— **13 T. L. J.,** *13.*

3. In a suit on a hypothecation deed, the plaintiff applied for an attachment before judgment, of the crops on the hypothecated properties.

*Held.*—No doubt the crops on the hypothecated properties were part of the property of the defendants and might be attached before judgment, and it was also possible that the defendants might seek to protract the suit with a view to remain in possession of the hypothecated properties as long as possible. However, within the ordinary meaning of words as used in Order XXXVI, Rule 5 (1) (*a*), the defendants who proposed to consume the yield of the properties in the ordinary way could not be said to be about to dispose of the whole or any part of these properties with intent to obstruct or delay the execution of any decree that might be passed against them.— **18 T. L. J.,** *961.*

4. See also—

Sec. 101.—**24 T. L. R.,** *191.*

Or. XXXVI, r. 6.—**43 T. L. R.,** *366.*

6. (1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

Attachment where cause not shown or security not furnished.

(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

---

Or. XXXVI, r. 6 [ =S. 464 =*Or. XXXVIII, r. 6*]

I. The words "or make such other order as it thinks fit" which occur at the end of Sub-Rule (2) of this Rule are new.

II. For Form of attachment before judgment, on proof of failure to furnish security, see Appendix F, Form No. 7.

### Case Law.

1. The contention that only such orders of withdrawal of attachment are appealable as are made on the defendant's showing cause against the attachment or on his furnishing security as provided in Clause (2) of Section 464, has nothing to support it. There is nothing in Section 557, Clause (24), [= new Section 82, Or. XLII, r. 1] to warrant the inference that the right of appeal conferred thereby is qualified or limited in the manner contended. On principle also, such a construction cannot be accepted. When a right of appeal is given to the plaintiff even in cases where an attachment is withdrawn on the production of security or on sufficient cause being shown against an attachment, it would be strange indeed if no right of appeal is given where an attachment is withdrawn when those conditions are not fulfilled. It is more reasonable to hold that the right of appeal depends upon the nature of the order that is actually passed irrespective of the circumstances under which it was passed. If the order finally withdraws the attachment, there would be a right of appeal.—
**15 T. L. J., *352*.**

2. A security deed, when it is accepted by the Court, takes effect from the time of its execution and not from the date of its acceptance by the Court.

An attachment of immovable property does not become effective when the order is made, but only when the attachment is effected.— **19 T. L. J., *748*.**

3. The application for attachment before judgment was made under Section 462 [Or. XXXVI, r. 5] on 13-2-1101. Before notice was issued on this application, the counter-petitioner voluntarily appeared in Court on 14-2-1101 and contested the application. The Court enquired into the matter. The parties were examined and a number of documents were adduced in evidence. After hearing both sides, the Court passed the order rejecting the application.

On appeal the question arose whether the order rejecting the application was one passed under Section 463 [=Or. XXXVI, r. 5 ] and non-appealable or under Section 464 and appealable as provided for in Section 557 (24) [ =Section 82 and Or. XLII, r. 1 ].

*Joseph Thaliath, J.*—The importance in differentiating whether an order is passed under Section 463 or 464 lies more in the

fact whether such order is prior or subsequent to the full enquiry contemplated under Section 464 than to any mere forms of procedure like issuing of notice, &c., prescribed in the Code.

When the defendant entered appearance before he was called upon to show cause, it should be taken as if he has asked the Court to dispense with the preliminary enquiry and to hear his defence. It is doubtful whether he could have claimed any *locus standi* unless the enquiry was being conducted by the Court under Section 464.

An order passed under Section 464, whether it be favourable or unfavourable to the plaintiff, is appealable. Section 557, Clause 24, does not restrict the appeals to orders passed against the defendant. The enquiry conducted by the lower Court is one provided by Section 464, and not the preliminary enquiry contemplated by Section 463, and the order passed after such an enquiry is one passed under Section 464 and hence it is appealable.

*Boothalingom Aiyer, J.*—An order refusing the attachment before the defendant was required to furnish security or to show cause why he should not do so, is one which was passed before reaching the stage contemplated by Section 464, and it should be viewed as having been made under Section 463. The circumstance that the defendant voluntarily appeared and opposed the application at the preliminary stage makes no difference.

The further investigation referred to in Section 463 must embrace also the reception of the rebutting evidence offered by the defendant who chooses to appear voluntarily.

The order of refusal of the application, though not expressly provided for in Section 463 [as in Section 471 ( = Or. XXXVII, r. 1) relating to application for temporary injunction] is obviously implied in the provision as it is the only possible order which could be made where the Court is not satisfied that any ground is made out in support of the application.

The order in question, therefore, falls under Section 463, having been made before the last stage referred to in Section 464 was reached. No appeal is provided for from the order under Section 463.

On this difference of opinion, the case was referred to the Chief Justice.

*Per Chatfield, C. J.*—The test as to the Section under which the order passed by the lower Court falls is the following :—

If the Court had been of opinion that a case for attachment had been made out, would it have been necessary to issue notice again to the defendant as provided in Section 463, or could an order of attachment have at once been made.

Before an order can be passed under Section 464, the defendant must have failed to show cause why he should not furnish security and must also have failed to furnish security required in the notice given to him by the Court. In this case, on his appearance before the Court without notice, the defendant might have failed to show cause why he should give security. But a final order of attachment could not have been passed against him, as he had not been given an opportunity to deposit security. The order of the lower Court was not one under Section 464, and the appeal, therefore, is not competent.

Section 557 (24) refer to orders under Section 464. Presumably an order refusing the jurisdiction conferred by this Section is as much an order passed under the Section, as an order in exercise of that jurisdiction.— **43 T. L. R.,** ***366.***

**4.** See also—

Or. XXXVI, r. 5.—**13 T. L. J.,** ***13.***

Mode of making attachment.

7. Save as otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree.

Investigation of claim to property attached before judgment.

8. Where any claim is preferred to property attached before judgment, such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for the payment of money.

Removal of attachment when security furnished or suit dismissed.

9. Where an order is made for attachment before judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

Attachment before judgment not to affect rights of strangers nor bar decree-holder from applying for sale.

10. Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

---

Or. XXXVI, r. 7 [= S. 465
= *Or. XXXVIII, r. 7*]

The words—"Save as otherwise expressly provided" at the beginning of the Rule are new.

**Case Law.**

See Or. XXI, r. 44,—**18 T. L. J.**, *651*.

Or. XXXVI, r. 8 [= S. 466
= *Or. XXXVIII, r. 8*]

In place of the words "for the payment of money" at the end of this Rule, Section 466 of the old Code had the words "for money."

**Case Law.**

From the wide terms in which Section 466 is enacted, it is clear that the Court is invested with the power to investigate and dispose of the claim thereunder preferred either before or after the judgment in the suit. The circumstance that the suit was decided before date of the claim petition was no justification for refusal to enquire into the matter.—**43 T. L. R.**, *461* (= **18 T. L. J.**, *1195*).

Or. XXXVI, r. 9 [= S. 467
= ***Or. XXXVIII, r. 9***]

Section 467 of the old Regulation was as follows:—

"467. *Removal of attachment when security furnished or suit dismissed.*—When an order of attachment before judgment is passed, the Court which passed the order shall remove the attachment whenever the defendant furnishes the security required, together with the security for the costs of the attachment, or when the suit is dismissed."

Or. XXXVI, r. 10 [=S. 468
=*Or. XXXVIII, r. 10*]

Property attached before judgment not to be re-attached in execution of decree.

11. Where property is under attachment by virtue of the provisions of this Order and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a re-attachment of the property.

---

## ORDER XXXVII.

### Temporary Injunctions and Interlocutory Orders.

#### *Temporary Injunctions.*

Cases in which temporary injunction may be granted.

1. Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders.

---

**Case Law.**

See—

| | |
|---|---|
| Sec. 40.— | 23 T. L. R., *57*. |
| „ 55.— | 9 T. L. R., *72* |
| „ 59.— | 2 T. L. J., *100*. |
| Or. XXI, r. 53.— | 6 T. L. J., *252*. |
| „ r. 62.— | 2 T. L. R., *42*. |

---

**Or. XXXVI, r. 11 [ = S. 469 = *Or. XXXVIII, r. 11*]**

The corresponding Section of Regulation II of 1065 was as follows :—

"469. *Property attached under Chapter not to be re-attached in execution of decree.*—Where property is under attachment by virtue of the provisions of this Chapter, and a decree is given in favour of the plaintiff, it shall not be necessary to re-attach the property in execution of such decree."

**Case Law.**

See under previous Rule.

---

*Rule omitted.*—The original Bill contained the following Rule (12) taken from the British Indian Code :—" Nothing in this Order shall be deemed to authorize the plaintiff to apply for the attachment of any agricultural produce in the possession of an agriculturist, or to empower the Court to order the attachment or production of such produce."

The Select Committee deleted the Rule.

---

**Or. XXXVII, r. 1 [ = S. 471 = *Or. XXXIX, r. 1*]**

I. Section 471 of Regulation II of 1065 was as follows:—"471. If, in any suit...... otherwise—

(a) that any property......of a decree, or

(b) that the defendant threatens, or is about, to remove or dispose of his property with intent to defraud his creditors,

the Court may by order ..restrain such act, or give such order for...as the Court thinks fit, or refuse such injunction or other order."

II. For Form of Temporary Injunctions, see Appendix F, Form No. 8.

### Case Law.

**1.** The contemplated ouster of plaintiff whose possession is admitted, entitles him to a temporary injunction to prevent the ouster pending the decision of his claim to a permanent occupancy right.

An order refusing to grant an interlocutory injunction is appealable.—

**10 T. L. R. App., *6*.**

**2.** Where a Zillah Judge ordered the issue of an injunction to one who was not a party to the suit;

*Held.*—Under Section 471 read along with Sections 473 and 476 [Or. XXXVII, r. 3 & Sec. 75] of the Civil Procedure Code, an injunction could be issued only to a party to the suit and not to a stranger who has not the opportunity of showing cause against the application for injunction or of claiming damages or compensation in the suit itself for the issue of the injunction on insufficient grounds.— **14 T. L. R. App., *50*.**

**3.** Temporary injunctions granting the same relief as are asked for in the plaint ought to be very sparingly granted and only in exceptional cases, unless the plaintiff's case is *prima facie* a strong one.—

**3 S. D., *387*.**

**4.** Plaintiff filed a suit in the Trivandrum District Court against the defendant and obtained an unconditional order prohibiting the defendant from executing a decree obtained by the latter in the Tinnevelly Sub-Court. The defendant contended that the Trivandrum District Judge had no jurisdiction to pass an order against the execution of a decree of a British Indian Court, and that the Judge ought not to have passed an unconditional order.

*Held.*—(1) Though the Trivandrum District Court cannot grant an injunction against the British Indian Court, it can issue an order against the defendant prohibiting him from executing his decree at his peril and that though the terms of Section 471 may not apply, the Courts have inherent powers beyond those given expressly by the C. P. C. when such inherent powers are necessary to prevent injustice and to avoid passing infructuous decrees.

(2) In granting injunctions in such cases, it would be better if some conditions, such as directing plaintiff to furnish security for any damages which might be incurred by the defendant as the result of the injunction prayed for are imposed: for otherwise, the defendant might lose by limitation his right to execute the British Indian decree.—

**3 S. D., *390*.**

Ref.—18 T. L. J., 966.

**5.** A Munsiff's Court is competent to issue an injunction restraining proceedings in execution pending before a Panchayat Court, and the Panchayat Court is bound to respect the injunction.

If the executing Court has notice of the injunction, the effect of which is to preserve the subject in controversy in *statu quo* by stopping the mischief complained of, it would stay the sale, and not persist, as in the case, the Panchayat Court had done in assisting the decree-holder to do what he was ordered not to do by a Court of competent jurisdiction. However, the property sold was movable property, and a sale in contravention of a temporary injunction is not invalid.—

**12. T. L. J., *311*.**

6. The defendants 1 and 2 obtained a decree against the plaintiff and his son V for balance of unpaid purchase money charged on the plaint property. The plaintiff who had been impleaded in that suit as the mortgagee of V did not contest the suit and a decree was made against him *ex parte*. He afterwards sought to set aside the *ex parte* decree: but failed both in the primary and the Appellate Courts. He then instituted the present suit to cancel that decree and proceedings in execution, and also applied for the issue of a temporary injunction. The lower Court refused the application for the issue of an injunction. Against the order of the lower Court refusing the application for the issue of an injunction, the present appeal was preferred to the High Court.

*Held.*—The exercise of the jurisdiction to grant relief by the issue of an injunction is not a matter *ex debito justitiae* but is one which is entirely within the discretion of the Court. The Court is not bound to grant such relief merely because it is lawful to do so. The jurisdiction of the Court in this matter being equitable, its interference is governed upon equitable principles. Therefore, the Court always looks to the conduct of the party who makes the application, and will refuse to interfere, even in cases where it acknowledges a right, unless his conduct in the matter is fair and honest.

It is a well-known rule that the Court must, before disturbing any man's legal right, or stripping him of any of the rights with which the law has clothed him, be satisfied that the probability is in favour of his case ultimately failing in the final issue of the suit.

Where an appeal attacks the exercise of discretion, before the Appellate Court will interfere in favour of the appellant, he must satisfy such Court that the discretion has been improperly exercised.—

**39 T. L. R.,** ***163***
**(= 12 T. L. J.,** ***305*****).**

**Fol.—48 T. L. R., 65.**

7. The provisions of Section 15, Clause (1) of the Limitation Regulation have received a liberal interpretation in Travancore and British India, in enabling parties to exclude the time, during which execution has been stayed by an injunction order. What has to be looked to in such cases is whether there has been substantially a stay of the proceedings. The benefit of the rule can be applied to cases of orders which directly but very proximately and effectively cause a stay. Where the object of the order is virtually to restrain or put a clog on the execution of the decree, Section 15 should be applied.

Even if the injunction or order relates only to a portion of the decree, it is operative for purposes of Section 15 of the Limitation Regulation, with respect to the whole of the decree. The principle underlying this is that the decree-holder could not be compelled to adopt a particular mode of executing his decree, as his discretion in choosing the best course therefore, should be left unfettered.

Where no time with respect to the duration of the order granting the injunction, is prescribed by the Court, the time during which it should be held operative must be determined on general principles relating to injunctions *ad litem*, there being no specification of duration in Rules 1 and 2 of Order XXXVII, both relating to injunctions.

"The sole obect of temporary and interlocutory injunctions is to preserve the subject in controversy in its then condition, and without determining any question of right merely to prevent the further perpetration of wrong or the doing of any act whereby the right in controversy may be materially injured or endangered."

Rules of procedure are intended to enable the Courts to act *ex debito justitiae* and to do real and substantial justice.

"It is the duty of the Judges to apply the laws, not only to what appears to be regulated by their express dispositions but to

all the cases to which a just application of them may be made and which appear to be comprehended either within the express sense of the law or within the consequences that may be gathered from it."

What the Courts have to look to in the exercise of the inherent powers under Section 115 is that the expressions of the Code or of any other law for the time being in force should not be transgressed or contravened in the invocation of such powers, and the Courts have always to utilise such powers in the interests of justice, equity and good conscience.

Bearing the above principles in mind, it may be laid down that the provisional remedies by way of orders relating to temporary injunctions, receivers, and other kindred matters, which are intended to afford relief to plaintiffs in actions against possible damage or prejudice by any act of the defendants should be held operative in appropriate cases so as to make the remedy effectively available for their benefit. Such orders would *ipso facto* cease to have any force when the suit is dismissed, for the Court then becomes *functus officio*. Where suits are eventually decreed in favour of the plaintiff, orders of this nature should be deemed to have binding force till expressly discharged by the Court or the interests of the plaintiffs are sufficiently safeguarded otherwise.

Hence the injunction continues to have binding force till the final disposal of the suit for the smaller sum by the Appellate Court. By the grant of the injunction staying the execution of the decree, the same should be taken to have been suspended till the cancellation of the order. Even if a fresh application for execution has been filed that could have been only by way of revivor or continuation of the former proceeding.

The expression "produce" in Section 242 [ = Or. XXI, r. 16 ] has to be construed in its ordinary sense. If at all the provisions of Chapter X of the Code (1065) relating to the production of documents and the standing orders issued under Section 591 [ new Section 91 ] alone could govern such production.

Where no judicial order disposing of the execution application for the larger sum, which was subject to the injunction had been passed, the decree-holder therein has the right to the benefit of Section 242, C. P. C. (of 1065).— **18 T. L. J.,** ***816.***

Fol.—19 T. L. J., 1071.

**8.** It is open to the Court to issue a temporary injunction even in cases where the property has been sold in execution of the decree. The expression "wrongfully sold in execution of the decree" in Order XXXVII, Rule 1, may reasonably be taken to include also the actual transfer of possession under the sale.

The Sections of the Civil Procedure Code do not exhaust the powers of the Court to issue injunctions. The issue of an injunction may be supported on the inherent power of the Court under its general equity jurisdiction to do what is necessary to subserve the ends of justice.— **18 T. L. J.,** ***966.***

**9.** Civil Courts should not be allowed to restrain a Magistrate from executing his order passed under Section 366, Criminal Procedure Code, by an injunction, on a mere *prima facie* case established in the Civil Courts. The case will be different when the Civil Court gives a decree after a full enquiry about the relationship of the parties.

In granting injunctions, the Court operates *in personam*, and there is no reason for thinking that the Indian Legislature when it spoke of staying proceedings by injunction intended any departure from that practice. The injunction therefore operates not only as regards a Court but also the parties concerned.—

**43 T. L. R.,** ***426***
**(= 18 T. L. J.,** ***694*****).**

**2. (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.**

Injunction to restrain repetition or continuance of breach.

**(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.**

---

**10.** The Civil Procedure Code contemplates no *interim* injunction after the opposite party has received notice of the application and filed his objections. The order granting the injunction at such a stage, in whatever form or words it might be stated, has to be regarded as falling under Rule 1 or Rule 2 of Order XXXVII, as the case may be, and consequently to be held as appealable under Order XLII, Rule 1, Clause (21).

An order for temporary injunction cannot be granted under Rule 2 which corresponds to Section 472 of the old Code, except in aid of the prospective order for permanent injunction prayed for in the plaint.— **44 T. L. R.,** *404.*

**11.** Normally, an injunction granted on an interlocutory application is superseded by the judgment in the action; and if the suit is dismissed, the temporary injunction issued will come to an end, as the suit ceases to be a pending suit and the Court which dismissed it would have no jurisdiction either to continue or maintain the injunction originally granted or to issue a fresh injunction in respect of the matter in suit.— **19 T. L. J.,** *1071.*

**12.** See also—

Sec. 47.—**18 T. L. J.,** *530.*

Or. XXXVII, r. 2 [= S. 472 = *Or. XXXIX, r. 2* ]

**1.** In Sub-Rule (1) of this Rule, the words "of any kind" after the words "or other injury" are new.

**2.** In Sub-Rule (2), the words "or refuse the same" which occurred after the words "as the Court thinks fit" at the end of the corresponding second para in the old Section, have been omitted.

**3.** Paras 3 and 4 of the old Section corresponding to Sub-Rules (3) and (4) were as follow :—

"In case of disobedience, an injunction granted under this Section or Section 471 may be enforced by the imprisonment of the defendant for a term not exceeding six months or the attachment of his property or both.

"No attachment under this Section shall remain in force for more than one year, at the end of which time, if the defendant has not obeyed the injunction, the property attached may be sold, and out of the proceeds the Court may award to the plaintiff such compensation as it thinks fit, and may pay the balance, if any, to the defendant."

### Case Law.

**1.** A District Judge granted an injunction under Section 472, C. P. C., in reversal

(3) In case of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release.

(4) No attachment under this Rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds, the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.

---

of the order passed by a District Munsiff. When an application for revision of the Judge's order was made by the first defendant, the petitioner, under Section 568 [new Section 89], the counter-petitioner opposed it on the ground that the first defendant's remedy lay under Section 575 or 560 [= Or. XLV, rr. 7 & 9 or Section 83 (1)], but not under Section 568.

*Held.*—To prevent grave and irreparable loss, the interference of the High Court under Section 568 was necessary in the interest of justice and the word "case" in that Section would cover an interlocutory order passed during the progress of a suit and the phrase "records of any case" occurring in the same Section would include so much of the proceedings in a suit as related to the interlocutory order.

A District Judge should, before granting an injunction in reversal of a District Munsiff's order, satisfy himself that *prima facie* the suit was within the cognisance of the District Munsiff.

As the suit in question was for declaration of a trust, the purpose and object of which were not definite enough to warrant a decree for specific performance, the District Judge was wrong in granting the injunction.— **14 T. L. R. App.**, *22.*

**2.** A scheme for the management of the Ananthanarayanapuram Devaswom was framed by the High Court as part of a Full Bench decree. The scheme provided for the removal of members of the Committee of management for misconduct, on application made by any person interested in the Devaswom. One such application was put in and the petitioner prayed for an injunction to restrain the president and certain members from exercising their functions until the disposal of the application.

The District Judge granted the injunction prayed for under Sections 472 and 584, Civil Procedure Code.

*Held.*—Section 584, C. P. C., [new Sec. 105] was not applicable to proceedings in execution of decrees.

The application for removal of the president and members for misconduct was not an application in execution of the decree under which the scheme was prepared, but was in the nature of an application to make a supplemental decree.

*Per Hunt, J.*—The provisions of the Code are not exhaustive. Courts have an inherent jurisdiction to do that justice for which alone they exist.

The granting of an injunction order is discretionary with the Court.

*Per Ramachandra Rao, J.*—In these matters (in the matter of granting injunction orders), the opinion of the lower Court is entitled to much weight and is liable to be set aside only if it is vague, arbitrary or fanciful.— **26 T. L. R.**, *162.*

Ref.—19 T. L. J., 368.

**3.** A obtained a personal decree against S and took out execution against R who had stood surety for the decree amount. R instituted a suit for setting aside the decree on the ground of fraud and collusion and applied for a temporary injunction to stay the execution of the decree. The Munsiff granted the injunction. On appeal:

*Held.*—(1) Section 472 C. P. C. under which the order appealed against had been made, did not apply to a case in which there was no prayer for restraining the defendant from causing any injury to the plaintiff.

(2) An order for temporary injunction could be sought only in aid of the prospective order for permanent injunction. As the plaintiff could not obtain a decree for perpetual injunction in the suit which was solely for a declaration, it was not competent to him to ask for a temporary injunction.— **39 T. L. R.,** ***172.***

Fol.—43 T. L. R., 65.

18 T. L. J., 74.

**4.** When there is no prayer in the plaint for restraining the defendant from committing an injury but only one for setting aside a decree in a prior case obtained by the defendant and declaring that he is not entitled to execute the same against the plaintiff and the plaintiff applied for a temporary injunction to stay the execution of the decree:

*Held.*—Section 472, C. P. C., does not apply as there is no prayer in the plaint for restraining the defendant from causing any injury to the plaintiff and the temporary injunction cannot be granted.—

**14 T. L. J.,** ***363.***

**5.** A temporary injunction under Section 472 can be sought only in aid of a prospective order for a perpetual injunction. In the absence of any prayer for perpetual injunction as a substantive relief in the suit, an application for a temporary injunction cannot be treated as one falling under Section 472.—

**18 T. L. J.,** ***74.***

**6.** A temporary injunction under Order XXXVII, Rule 2, can be sought only in aid of prospective order for a perpetual injunction and in the absence of a prayer in the suit for any perpetual injunction, no temporary injunction can be asked for.

To sustain an application for temporary injunction the applicant should, among other things, satisfy the Court that he has a fair and substantial *prima facie* case in support of the right he claims. This does not mean that he should make out a clear legal title.

An interlocutory injunction should not be lightly granted. "The power of granting an injunction is one which has been perhaps a little lavishly bestowed upon the Courts in this country. It is a tremendous power and one which the superior Courts must carefully guard themselves from exercising hastily or without solid grounds." A person who seeks the aid of the Court by way of interlocutory injunction must be able to satisfy the Court that its interference is necessary to protect him from that species of injury which the Court calls irreparable before the legal right can be established upon trial.

In granting or withholding an injunction, the Courts should exercise a judicial discretion and weigh the amount of substantial mischief done or threatened to the plaintiff and compare it with that which the injunction, if granted, would inflict on the defendant.

In dealing with an application for temporary injunction, "the Court always looks to the conduct of the party who makes the application and will refuse to interfere, even in cases where it acknowledges a right, unless his conduct in the matter is fair and honest."— **43 T. L. R.,** ***65.***

Fol.—18 T. L. J., 74.

**7.** See also—

Or. XXI, r. 2.—**13 T. L. R.,** ***171.***

,, XXXVII, r. 1.—**44 T. L. R.,** ***404.***

Before granting injunction, Court to direct notice to opposite party.

3. The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.

Order for injunction may be discharged, varied or set aside.

4. Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order.

Injunction to corporation binding on its officers.

5. An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action it seeks to restrain.

*Interlocutory Orders.*

Power to order interim sale.

6. The Court may, on the application of any party to a suit, order the sale, by any person named in such order and in such manner and on such terms as it thinks fit, of any movable property, being the subject-matter of such suit, or attached before judgment in such suit which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once.

---

**Or. XXXVII, r. 3** [ = S. 473 = *Or. XXXIX, r. 3* ]

**Or. XXXVII, r. 4** [ = S. 475 = *Or. XXXIX, r. 4* ]

**Case Law.**

See under Rule 2 above.

**Or. XXXVII, r. 5** [ = S. 474 = *Or. XXXIX, r. 5* ]

**Or. XXXVII, r. 6** [ = S. 477 = *Or. XXXIX, r. 6* ]

I. Section 477 of Regulation II of 1065 was as follows :—

"477. *Power to order interim sale of perishable and other articles.*—The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property, being the subject of such suit, which is subject to speedy and natural decay, or to the sale of which the parties to the suit have given their consent in writing."

II. In regard to the addition of the words at the end of the Rule—" or which for any other just......sold at once"—the Indian Special Committee observed :—" Words have been added to Section 498 so as to empower the Court to order a sale of securities where the state of the market requires such a course."

7. (1) The Court may, on the application of any party to a suit, and on such terms as it thinks fit,—

Detention, preservation, inspection, etc., of subject-matter of suit.

(a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein;

(b) for all or any of the purposes aforesaid authorise any person to enter upon or into any land or building in the possession of any other party to such suit; and

(c) for all or any of the purposes aforesaid authorise any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The provisions as to execution of process shall apply, *mutatis mutandis*, to persons authorised to enter under this Rule.

8. (1) An application by the plaintiff for an order under Rule 6 or Rule 7 may be made after notice to the defendant at any time after institution of the suit.

Application for such orders to be after notice.

(2) An application by the defendant for a like order may be made after notice to the plaintiff at any time after appearance.

---

Or. XXXVII, r. 7 [= S. 478
= *Or. XXXIX, r. 7*
= En. Or. 50, r. 3]

This Rule reproduces Section 478 of Regulation II of 1065, with the addition to Clause (a) of the words—"or as to which any question may arise therein." With this addition, the Rule reproduces the English Rule.

Or. XXXVII, r. 8 [= S. 479
= *Or. XXXIX, r. 8*]

The first para of Section 479 of the old Regulation corresponding to Sub-Rule (1) was as follows:—"An application by the plaintiff......to the defendant at any time after service of the summons."

Under the modification made by the Sub-Rule, "the plaintiff is enabled to get any emergent order subsequent to the filing of the suit, instead of, as at present, only after service of summons."—

*Notes on Clauses.*

When party may be put in immediate possession of land, the subject-matter of suit.

9. Where land paying revenue to the Government, or a tenure liable to sale, is the subject-matter of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure;

and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

Deposit of money, etc., in Court.

10. Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

---

Or. XXXVII, r. 9 [= S. 480
= *Or. XXXIX, r. 9*]

Or. XXXVII, r. 10 [=S. 481
= *Or. XXXIX r. 10*]

**Case Law.**

Under Section 481, a Court is competent to direct a party to deposit a sum of money in Court, provided, among other things, there is pending before it a suit the subject-matter of which is money and a party thereto admits that the money is due from him to another party.

The Section cannot be confined to cases where one party admits that he is in possession of money actually belonging to another party, as distinguished from money which is only due to another.

The Section is obviously enacted for the purpose of arming the Court with the necessary powers in the matter of passing interlocutory orders, for the purpose of safeguarding the interests of parties pending suit, in certain prescribed contingencies.— **17 T. L. J., *680*.**

## ORDER XXXVIII.

### Appointment of Receivers.

Appointment of receivers.

**1.** (1) Where it appears to the Court to be just and convenient, the Court may by order—

(*a*) appoint a receiver of any property, whether before or after decree;

(*b*) remove any person from the possession or custody of the property;

(*c*) commit the same to the possession, custody or management of the receiver; and

(*d*) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit,

(2) Nothing in this Rule shall authorise the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.

Remuneration.

**2.** The Court may by general or special order fix the amount to be paid as remuneration for the services of the receiver.

Duties.

**3.** Every receiver so appointed shall—

(*a*) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property;

(*b*) submit his accounts at such periods and in such form as the Court directs;

(*c*) pay the amount due from him as the Court directs; and

(*d*) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

**Or. XXXVIII, r. 1** [= S. 482
= *Or. XL, r. 1*]

**Or. XXXVIII, r. 2** [= S. 482
= *Or. XL, r. 2*]

**Or. XXXVIII, r. 3** [= S. 482
= *Or. XL, r. 3*]

I. Section 482 of Regulation II of 1065 which covers the above three Rules, was as follows :—

" 482. *Power of Court to appoint receivers.*—Whenever it appears to the Court to be necessary for the realization, preservation or better custody or management of any property, movable or immovable, the subject of a suit, or under attachment, the Court may by order—

(*a*) appoint a receiver of such property, and, if need be,

(*b*) remove the person in whose possession or custody the property may be from the possession or custody thereof ;

(*c*) commit the same to the custody or management of such receiver ; and,

(*d*) grant to such receiver such fee or commission on the rents and profits of the property by way of remuneration, and all such powers as to bringing and defending suits, and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of instruments in writing, as the owner himself has, or such of those powers as the Court thinks fit.

*Receiver's liabilities.*—Every receiver so appointed shall

(*e*) give such security (if any) as the Court thinks fit duly to account for what he shall receive in respect of the property ;

(*f*) pass his accounts at such periods and in such form as the Court directs ;

(*g*) pay the balance due from him thereon as the Court directs ; and

(*h*) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Nothing in this Section authorizes the Court to remove from the possession or custody of property under attachment any person whom the parties to the suit or, some or one of them, have or has not a present right so to remove."

II. In regard to Rule 1, the Notes on Clauses say :—" This Rule considerably enlarges the powers of the Court to appoint receivers, the only limitation on such powers being that the Court should be of opinion that it is convenient as well as just to make the appointment. The existing Code restricts the powers in two ways :—

(i) Property which is the subject of suit, or under attachment, may alone be handed over to a receiver.

(ii) It must appear necessary that the appointment of a receiver would achieve the realisation, preservation, or the better custody or management of such property.

There is no reason why, at the present time, at all events, there should be such restriction. It will be seen from Sub-Rule (2) that no stranger to the suit may be disturbed. It is but right that the parties to a suit should be under the absolute control of the Court, in order to render complete justice between the parties."

III. For Form of Appointment of a Receiver under Rule 1, see Appendix F, Form No. 9.

For Form of Bond to be given by Receiver, see Appendix F, Form No. 10.

IV. 1. Chapter XXXV of Regulation II of 1065 which dealt with "Appointment of Receivers" had three Sections—482, 483 and 484. The first two have been incorporated in the new Regulation, while the last has been omitted. It was as follows:—

"484. *Courts empowered under this Chapter.*—The powers conferred by this Chapter shall be exercised only by the High Court and District Courts: Provided that, whenever the Judge of a Court subordinate to a District Court considers it expedient that a receiver should be appointed in any suit before him, he shall nominate such person as he considers fit for such appointment, and submit such person's name, with the grounds for the nomination, to the District Court, and the District Court shall authorize such Judge to appoint the person so nominated, or pass such other order as it thinks fit."

2. In 39 T. L. R., 99 (13 T. L. J., 11) the procedure for appointment of receivers was laid down.

In this case, a District Judge by an order expressed his opinion that upon the facts before him, the plaintiff's prayer for the appointment of a receiver ought to be allowed and directed the plaintiff to produce a proper man for nomination to the District Court under Section 484. The defendant appealed from that order. It was held that the order was only a preliminary one falling under Section 484, and no appeal lay from such an order.

### Case Law.

1. There is nothing in the Code of Civil Procedure which limits the power of the Court to appoint a receiver after decree, if such a course is necessary or proper.

Plaintiff held a hypothecation decree over the equity of redemption in properties of his judgment-debtors. The latter, with a view to defeat plaintiff's rights and acting in collusion with the mortgagees, nearly allowed their decree for a redemption to become barred. Under these circumstances, the plaintiff applied to the Court to appoint a receiver for executing the redemption decree. It was contended that the provisions of Section 482 of the Code of Civil Procedure, did not cover a case like the present and that the plaintiff could execute the redemption decree only after purchasing the equity of redemption in Court-sale in execution of his hypothecation decree.

*Held.*—Section 482 should receive a liberal construction. The subject-matter of the suit being the equity of redemption of the properties, its preservation was absolutely necessary by appointing a receiver to execute the redemption decree.—

**28 T. L. R.,** *71.*

2. During the term of attachment placed on a property by a Magistrate, though the receiver appointed by the Court was the person in possession of the property, such possession must be held to have been for and on behalf of the person who had been in possession on the date of attachment,

"The receiver in a suit is nothing more than the hand of the Court for the purpose of holding the property of the litigants whenever it is necessary that it should be kept in the grasp of the Court in order to preserve the subject-matter of the suit *pendente lite,* and the possession of the receiver is simply the possession of the Court and whatever he rightly does with regard to the property, he does simply as the agent of the owner of the property.—

**2 T. L. J.,** *237.*

Ref.—16 T. L. J., 225.

3. In a suit for the settlement of a scheme of management for a mosque, the property of the mosque is the subject-matter of the suit for the purpose of Section 482, C. P. C., and the Court has jurisdiction to appoint a receiver if it is convinced that there is a justification for such appointment.

The exercise of the jurisdiction to appoint a receiver is not a matter *ex debito justitiae*, but one which is purely within the discretion of the Court: the Court is not bound to grant such relief merely because it is lawful to do so. In exercising its discretion, the Court shall proceed with the greatest care and caution; and the appointment of a receiver is a step which should not be taken without special reasons, particularly in the case of a *bona fide* possessor with legal title.— **10 T. L. J.**, *88.*

**4.** The appointment as well as the removal of a receiver, is a matter which rests in the sound discretion of the Court. A receiver being an impartial person as between the parties and being the Officer of the Court and representative of the Court in the management and control of the property in controversy, considerable importance attaches to the question of his selection. Inasmuch as a receiver is required to be an impartial person, the person chosen should, as a general rule, be wholly disinterested in the subject-matter of the suit. One of the parties to a cause shall not be appointed receiver without the consent of the other party, unless a very special case is made.

The power of the Court to remove a receiver whom it has appointed is a necessary adjunct of the power of appointment, and is exercised as an incident to or consequence of that power.

The right to propose a proper person for the office of receiver rests in the first instance with the parties. The object being the proper preservation of the property pending the suit, no person other than those interested in it can be expected to suggest the most competent person for the office; and all *bona fide* representations of the parties regarding the qualifications of the persons suggested for the office are entitled to great consideration at the hands of the Court. The Court is no doubt not bound to appoint the person proposed by the parties, if he does not appear to the Court to be a proper person: but where the parties are agreed or practically agreed as to the person to be appointed, the Court may make the appointment without much further enquiry.

When the lower Court has in the exercise of its judgment made its selection, the Appellate Court will not interfere unless some over-whelming objection in point of propriety or some fatal objection in principle to the person appointed is shown.

As a general rule, every receiver appointed must give security, duly to account for what he shall receive in respect of the property: and if as in exceptional cases, no security is to be given, it should be so stated in the order. The appointment of the receiver is for the ultimate benefit of the party or parties to whom the Court shall by its decisions award the property: and this ultimate benefit which the Court must constantly have in view renders it essential that the Court should take the necessary steps to safeguard the estate from the injurious consequences of the receiver's illegal or negligent acts or omissions. The necessity for taking proper security becomes all the more stringent when the receiver is appointed to collect outstandings and take possession of the properties and the order grants remuneration for his work.—**37 T. L. R.**, *245*
**(= 10 T. L. J.**, *387*).

Fol.—38 T. L. R., 265
( = 13 T. L. J., 507).

**5.** The appointment of a receiver is a matter which is purely within the discretion of the Court and the exercise of this, like all other matters of judicial discretion, will rarely be interfered with by an appellate tribunal. The opinion of the primary Courts is, in a matter like this, of great weight. It has the facts and the parties before it and is perhaps the best tribunal to decide whether it is necessary or expedient, having regard to the circumstances, that a

receiver should be appointed. And a party who in appeal attacks the exercise of this discretion should show that the discretion has been improperly so exercised. As regards the selection of a receiver, the lower Court's decision will be interfered with if some 'over-whelming objection in point of propriety of choice or some objection fatal in principle,' to the person selected be shown.— **10 T. L. J.**, *309.*

**6.** A receiver can be appointed under the provisions of the Civil Procedure Code in a suit to enforce a mortgage.— **10 T. L. J.**, *337.*

Fol.—12 T. L. J., 195.

**7.** Where an appeal was preferred by an *interim* receiver against an order of a District Judge directing him to furnish further security for continuing as receiver and a preliminary objection is raised by the respondents that the appeal was incompetent.

*Held.*—The order was not appealable.

*Per Sesha Aiyar, J.*—The right of appeal is available only to the parties to the suit and a receiver is not entitled to prefer an appeal. The fact that the receiver is a party to the suit does not affect his right of appeal. The receiver as such is different from the party. He is the representative of the Court in the administration of the property in litigation, pending a judicial determination of the rights of the parties to the suit. "He is merely the officer of the Court and the estate (which he administers) must for all legal purposes be regarded as being *in manibus curiae.*" The Court has ample jurisdiction to impose conditions on him for the due and satisfactory discharge of his work as an officer of the Court. He is subject to the orders of the Court as its representative; and having regard to his position, he cannot have a right of appeal against the order of the lower Court. If he is unwilling to furnish the security, he cannot be the receiver, and there is an end of the matter.

A receiver appointed by the Court is appointed on behalf and for the benefit of all persons interested, parties to the suit or proceedings. Section 482 falls into two clearly marked divisions, Clauses (*a*) to (*d*) constituting one division, and (*e*) to (*h*) constituting the other. The former embraces acts which the Court may do "by order"; and the latter embraces the liabilities of the receiver. It is clear that, while in the first class of acts, the Section contemplates an order passed by the Court, in the other class which enumerates the receiver's liabilities, the passing of any order by the Court is not contemplated, though, of course, the Court may have to give directions to the receiver in connection with those matters. If so, it is only orders that fall under Clauses (*a*) to (*d*) of the Section that can be held to be appealable; while the directions that fall under Clauses (*e*) to (*h*) which are intended to help the Court to exercise effective control over the receiver as its representative or officer, cannot be made the subject of appeal.— **38 T. L. R.**, *1* (= **11 T. L. J.**, *405*).

**8.** (1) A receiver can be appointed after decree.

(2) A receiver can be appointed even when the subject-matter in dispute was only the equity of redemption.—**12 T. L. J.**, *195.*

**9.** Under Section 482, Clause (*e*), C. P. C., the demanding of security is not always obligatory. Ordinarily, the Court will not dispense with security duly to account for what the receiver shall receive and to pay the same as the Court shall direct; but it is not beyond the competency of the Court to appoint in exceptional case, a receiver without the usual security.

It is not unusual, where no salary is given to the receiver, to dispense with the security.

When the lower Court has exercised its discretion in imposing conditions, the Court of appeal will not ordinarily interfere.

When no security is needed to be given, it should be so stated in the order appointing the receiver.

A receiver is entitled to have out of the funds collected or realised by him, his expenses properly incurred in the discharge of his ordinary duties or in the performance of extraordinary services which have been sanctioned by the Court or which have benefited the estate.—**38 T. L. R.**, *265* (=**13 T. L. J.**, *507*).

**10.** The suit was for a declaration of the plaintiff's title to the plaint properties and to recover them with mesne profits from the defendants who were alleged to have trespassed on the properties after the plaintiff had obtained delivery of the properties in execution of a decree. The defendants set up possession under an independent title and denied the plaintiff's title and possession. The plaintiff applied for the appointment of a receiver to take possession of the properties.

*Held.*—The plaintiff's apprehensions that he might not be able to realise mesne profits and costs of suit if he succeeded in getting a decree in his favour and that the defendants might neglect to take proper care of the properties during the pendency of the suit were not sufficient grounds for the appointment of a receiver. The appointment of a receiver was, no doubt, in the discretion of the Court, but the power of appointment was not to be exercised as a matter of course, but was to be used with the greatest care and caution. In the case, the defendants were admittedly in possession, and such possession was not to be divested by the appointment of a receiver, unless a very strong case was made out for such a course being adopted. The power of appointing a receiver should be exercised with a sound discretion, upon a view of the whole circumstances of the case, not merely the circumstances which might make the appointment expedient for the protection of the property, but all the circumstances connected with the right which was asserted and had to be established. The Court would not interfere by appointing a receiver where a right was asserted to property in the possession of a defendant claiming to hold it under a legal title, unless a strong case was made out.— **14 T. L. J.**, *317*.

**11.** The order appointing a receiver under Section 482, C. P. C., is appealable under Clause 24 of Section 557, and the appeal lies to the Court to which an appeal would lie from the decree that may be passed in the suit.

Where the Appellate Court has already passed an order under Section 484 (omitted in new Code), that Court is no doubt incompetent to hear the appeal against the order under Section 482, under Section 19, Subsection (2) of the Civil Courts Regulation. But this disqualification is only personal. A party cannot be deprived of his right of appeal to a particular Court merely because it is presided over by an Officer who cannot hear the appeal by reason of personal disqualification.

Where such disqualification exists, action should be taken under Section 19, Sub-section (3), of the Civil Courts Regulation, and the appeal should be transferred to another Court.

A District Judge who acts under Section 484 (now omitted) exercises not a ministerial but a judicial function. His duty under that Section is not merely to approve or disapprove of the appointment of the Munsiff's nominee, but also to take into consideration the necessity for the appointment of a receiver and pass such other orders as the circumstances of the case may require. **16 T. L. J.**, *68*.

**12.** Civil Miscellaneous appeals were preferred against the order of the lower Court granting the application of the plaintiffs for the appointment of a receiver in a suit brought by the members of two Thavazhees of a Nayar Tarwad under Sec. 37

4. Where a receiver—

Enforcement of receiver's duties.

(a) fails to submit his accounts at such periods and in such form as the Court directs, or

(b) fails to pay the amount due from him as the Court directs, or

(c) occasions loss to the property by his wilful default or gross negligence,

the Court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.

---

(1) of the Regulation for partition of the Tarwad properties.

*Held*.—In the circumstances of the case, the lower Court exercised its discretion properly in granting the application for the appointment of a receiver so far as the properties of the Tarwad in the possession of the 1st defendant, the Karanavan, were concerned.

The Court has jurisdiction to appoint a receiver until the hearing of a particular action or until further orders, even though there is no exclusive occupation by any party and the Court would not hesitate to do so whenever it was just and convenient. The case for the appointment of a receiver is much stronger if a party to the partition action is in sole occupation. The Court might, in the exercise of its discretion, appoint or refuse the appointment of a receiver after duly weighing the facts of the case.

When the plaintiff has made out that he has a good case to claim a share in the plaint property and when some circumstances are shown which render it just and desirable in the interest of all the parties that possession should not be exclusively to one of the parties in a partition suit, the Court will appoint a receiver. No distinction should be drawn between cases governed by the Hindu Law and cases governed by the Marumakkathayam law. The distinction between parties governed by these systems of law is based on Section 39 of the Regulation (II of 1100) which provides that, until partition, no member of the Tarwad shall be deemed to have a definite share in Tarwad property liable to be seized in execution nor shall such member be deemed to have any alienable or heritable interest therein.

As regards certain properties which are Kandukrishi lands, no sanction from Government was filed with the plaint as required by Section 8 C. P. C. Accordingly no receiver could be appointed by the Court for these properties.—

**42 T. L. R.**, *453*
(= **16 T. L. J.**, *595*).

**13.** In the matter of appointment of receivers, Order XXXVIII, Rule 1, gives wider powers to the Court than Section 482 of the old Code which was restricted to cases where the appointment appeared to be necessary for the realisation, preservation or better custody or management of property which is

When Division Peishkar may be appointed receiver.

5. Where the property is land and the Court considers that the interests of those concerned will be promoted by the management of the Division Peishkar, the Court may, with the previous sanction of the Government, appoint him to be receiver of such property.

---

## ORDER XXXIX.

### Arbitration.

*Arbitration in Suits.*

Parties to suit may apply for order of reference.

1. (1) Where in any suit all the parties interested agree that any matter in difference between them shall be referred to arbitration, they may, at any time before judgment is pronounced, apply to the Court for an order of reference.

(2) Every such application shall be in writing and shall state the matter sought to be referred.

---

the subject of the suit or under attachment. These wide powers should be exercised with great caution. Where a property in dispute is admittedly in the possession of the defendant under a title which is *prima facie* legal, the Court will not ordinarily be justified in disturbing the defendant's possession by the appointment of a receiver. This may be taken to be the ordinary rule; but that does not mean that the rule is an invariable one. Each case must be dealt with on its own facts.—

**19 T. L. J.,** *598.*

**Or. XXXVIII, r. 4** [= „ = *Or. XL, r. 4*]

"This Rule is new, but is only an express legislative enactment of a liability which the Courts always held that a receiver was subject to."— *Notes on Clauses.*

**Or. XXXVIII, r. 5** [= S. 483 = *Or. XL, r. 5*]

**Or. XXXIX**: In the British Indian Code of 1882, "Arbitration." formed a Chapter in the body of the Code. In the present Code, the provisions have been removed and placed in a separate Schedule (II) appended to the Code. In regard to this, the Indian Special Committee say:—"Two questions of importance have arisen in connection with this subject: (1) should any of the Sections of the Arbitration Act of 1899 be incorporated into the Code; (2) should the right of appeal, as now existing, be altered, and if so, in what direction? We are of opinion that the best course would undoubtedly be to eliminate from the Code all the clauses as to arbitration, and insert them in a new and comprehensive Arbitration Act. There are, perhaps, difficulties as to this at present. We have determined therefore to leave the arbitration clauses much as they are in the present Code: but we have placed them in a Schedule in the hope that at no distant date they may be transferred into a comprehensive Arbitration Act."

2. The arbitrator shall be appointed in such manner as may be agreed upon between the parties.

Appointment of arbitrator.

3. (1) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the making of the award, and shall specify such time in the order.

Order of reference.

(2) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this Order, deal with such matter in the same suit.

---

**Or. XXXIX, r. 1** [= S. 485
= *Sch. II, Para 1* ]

The corresponding Section of Regulation II of 1065 was as follows :—

"485. *Parties to a suit may apply for order of reference.*—If all the parties to a suit desire that any matter in difference between them in the suit be referred to arbitration, they may, at any time before judgment is pronounced, apply, in person or by their respective pleaders specially authorized in writing in this behalf, to the Court for an order of reference.

Every such application shall be in writing and shall state the particular matter sought to be referred."

**Case Law.**

1. Under Section 501 of the Civil Procedure Code, [ = Or. XXXIX, r. 16 ] no appeal lies from a judgment or decree passed in accordance with the award of an arbitrator, except in so far as such decree or judgment is in excess of or not in accordance with the award. It stands to reason that the law should be so; for, the object of arbitration which is to secure cheap substantial justice without a protracted trial before the courts, would be defeated if appeals are to be allowed from the awards of arbitrators on merits.

The omission to file an arbitrator's award in Court on the date fixed by the Court does not render it invalid when it has been made and pronounced within the prescribed date. The word "made" does not include the filing of the award.

It is discretionary with the Court to compel an arbitrator to give evidence on matters he has dealt with as an arbitrator. Judges and arbitrators are, from motives of public policy, not compellable to testify as to certain matters though, when fraud is alleged, they may (F. B.).—

**15 T. L. R.,** ***47.***

Fol.—14 T. L. J., 452.

2. All the contending parties must join in the submission of an arbitration award : otherwise, it is defective in respect of one important element of an arbitration award, namely, finality.— **1 S. D.,** ***290.***

3. See also—

Or. XXXIX, r. 15.—**1 T. L. J.,** ***10.***

" r. 20.—**29 T. L.R.,** ***63***
(=**3 T. L. J.,** ***244***)

**Or. XXXIX, r. 2** [=S. 486, Para 1
=*Sch. II, Para 2* ]

This rule corresponds to Para 1 of Section 486 of the old Regulation which was as follows:—

"486. *Nomination of arbitrator.*—The arbitrator shall be nominated by the parties in such manner as may be agreed upon between them.

Where reference is to two or more, order to provide for difference of opinion.

4. (1) Where the reference is to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators—

(*a*) by the appointment of an umpire; or

(*b*) by declaring that, if the majority of the arbitrators agree, the decision of the majority shall prevail; or

(*c*) by empowering the arbitrators to appoint an umpire; or

(*d*) otherwise as may be agreed between the parties or, if they cannot agree, as the Court may determine.

(2) Where an umpire is appointed, the Court shall fix such time as it thinks reasonable for the making of his award in case he is required to act.

---

**Or. XXXIX, r. 3** [ = S. 487 = *Sch. II, Para 3* ]

In Sub-Rule (1), the words "for the making of the award" have been substituted for the words "for the delivery of the award" which occurred in Section 487 of the old Regulation.

**Case Law.**

Matters in dispute between parties were referred to arbitration. The award was submitted to the Court after the expiry of the time fixed for its delivery; but the Court remitted the award to the arbitrator for reconsideration as it was submitted after time. The Court granted time afresh and, within such time, the award was re-submitted to the Court which passed a decree in accordance with its terms.

***Held.***—Under Section 500 of the Civil Procedure Code, [ = Or. XXXIX, r. 15] no award is valid unless made within the period allowed by the Court.

Although, under Section 493 [ = Or. XXXIX, r. 8], the Court has the fullest power to enlarge time, so long as the award was not completed, it possesses no such power when once the time was passed or the award was made and delivered. When the award was, in the first instance delivered, the arbitrator had ceased to have any lawful authority to make it. It was competent to the Court to have enlarged the period for the delivery of the award; but the Court, in the case, did not do so; and its action, allowing a fresh period when it purported to remit the award could not be regarded as enlargement of the time under Section 493 [ = Or. XXXIX, r. 8].

When a matter in difference between the parties has once been referred to arbitration, the Court is, by Section 487, precluded from dealing with it, save in accordance with the provisions of the succeeding Sections. None of the Sections confers upon the Court a power to make a second reference to arbitration upon the same agreement.

The second remission cannot be treated as coming under Section 499 (C) of the Code [ = Or. XXXIX, r. 14].—

**10 T. L. J., *65*.**

**Or. XXXIX, r. 4** [=S. 488 = *Sch. II, Para 4*]

5. (1) In any of the following cases, namely :—

Power of Court to appoint arbitrator in certain cases.

(a) where the parties cannot agree within a reasonable time with respect to the appointment of an arbitrator, or the person appointed refuses to accept the office of arbitrator, or

(b) where an arbitrator or umpire—

(i) dies, or

(ii) refuses or neglects to act or becomes incapable of acting, or

(iii) leaves Travancore in circumstances showing that he will probably not return at an early date, or

(c) where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so,

any party may serve the other party or the arbitrators, as the case may be, with a written notice to appoint an arbitrator or umpire.

(2) If, within seven clear days after such notice has been served or such further time as the Court may in each case allow, no arbitrator or no umpire is appointed, as the case may be, the Court may, on application by the party who gave the notice, and after giving the other party an opportunity of being heard, appoint an arbitrator or umpire or make an order superseding the arbitration, and in such case shall proceed with the suit.

---

**Or. XXXIX, r. 5** [ = Ss. 486, Para 2, 489, 490 = *Sch. II, Para 5* ]

The corresponding provisions of the old Regulation were as follow :—

"486, Para 2.—"If the parties cannot agree with respect to such nomination, or if the person whom they nominate refuses to accept the arbitration and the parties desire that the nomination shall be made by the Court, the Court shall nominate the arbitrator."

"489. *Death, incapacity, &c., of arbitrators or umpire.*—If the arbitrator, or, where there are more arbitrators than one, any of the arbitrators, or the umpire, dies, or refuses, or neglects, or becomes incapable to act, or leaves Travancore under circumstances showing that he will probably not return at an early date, the Court may in its discretion either appoint a new arbitrator or umpire in the place of the person so dying, or refusing, or neglecting, or becoming incapable to act, or leaving Travancore, or make an order superseding the arbitration, and in such case shall proceed with the suit.

6. Every arbitrator or umpire appointed under Rule 4 or Rule 5 shall have the like powers as if his name had been inserted in the order of reference.

Powers of arbitrator or umpire appointed under Rule 4 or 5.

7. (1) The Court shall issue the same processes to the parties and witnesses whom the arbitrator or umpire desires to examine, as the Court may issue in suits tried before it.

Summoning witnesses and default.

(2) Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

8. Where the arbitrators or the umpire cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either allow further time, and from time to time, either before or after the expiration of the period fixed for the making of the award, enlarge such period ; or may make an order superseding the arbitration, and in such case shall proceed with the suit.

Extension of time for making award.

---

"490. *Appointment of umpire by Court.* —Where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so, any of the parties may serve the arbitrators with a written notice to appoint an umpire ; and if, within seven days after such notice has been served, or such further time as the Court may in each case allow, no umpire be appointed, the Court, upon the application of the party who has served such notice as aforesaid, may appoint an umpire."

**Or. XXXIX, r. 6** [= S. 491 = *Sch. II, Para 6*]

**Or. XXXIX, r. 7** [ = S. 492 = *Sch. II, Para 7*]

**Or. XXXIX, r. 8** [ = S. 493 = *Sch, II, Para 8*]

Section 493 of Regulation II of 1065 was as follows :—

"493. *Extension of time for making award.*—If, from the want of the necessary evidence or information, or from any other cause, the arbitrators cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either grant a further time, and from time to time enlarge the period for the delivery of the award or make an order superseding the arbitration, and in such case shall proceed with the suit."

**Case Law.**

1. For superseding an arbitration, a written order is not absolutely necessary in all cases. The fact that the progress diary of

9. Where an umpire has been appointed, he may enter on the reference in the place of the arbitrators,—

Where umpire may arbitrate in lieu of arbitrators.

(a) if they have allowed the appointed time to expire without making an award, or

(b) if they have delivered to the Court or to the umpire a notice in writing stating that they cannot agree.

10. Where an award in a suit has been made, the persons who made it shall sign it and cause it to be filed in Court together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

Award to be signed and filed.

11. Upon any reference by an order of the Court, the arbitrator or umpire may, with the leave of the Court, state the award as to the whole or any part thereof in the form of a special case for the opinion of the Court, and the Court shall deliver its opinion thereon, and shall order such opinion to be added to and to form part of the award.

Statement of special case by arbitrators or umpire.

12. The Court may, by order, modify or correct an award—

Power to modify or correct award.

(a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or

---

the Court shows that the parties were informed of the supersession verbally ordered is enough for the purpose.

The omission to record a written order has not, in the circumstances of the case, affected either the merits of the case or prejudiced the plaintiff in any way.— 16 T. L. R., *14*.

**2.** See also—

Or. XXXIX, r. 3.—10 T. L. J., *65*.

---

Or. XXXIX, r. 9 [= S. 494 = *Sch. II, Para 9*]

---

Or. XXXIX, r. 10 [= S. 495 = *Sch. II, Para 10*]

---

Or. XXXIX, r. 11 [= S. 496 = *Sch. II, Para 11*]

The words "with the leave of the Court" have been substituted for the words "with the consent of the Court" which occurred in Section 496 of the old Regulation.

At the end of the old Section, the words were:—"shall deliver its opinion thereon; and such opinion shall be added to and form part of the award."

---

Or. XXXIX, r. 12 [= S. 497 = *Sch. II, Para 12*]

Grounds for setting aside award.

15. (1) An award remitted under Rule 14 becomes void on failure of the arbitrator or umpire to reconsider it. But no award shall be set aside except on one of the following grounds, namely,—

(a) corruption or misconduct of the arbitrator or umpire;

(b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;

(c) the award having been made after the issue of an order by the Court superseding the arbitration and proceeding with the suit or after the expiration of the period allowed by the Court, or being otherwise invalid.

(2) Where an award becomes void or is set aside under Sub-rule (1), the Court shall make an order superseding the arbitration and in such case shall proceed with the suit.

---

**Or. XXXIX, r. 15 [= S. 500 = *Sch. II, Para 15*]**

The corresponding Section of Regulation II of 1065 was as follows:—

"500. *Grounds for setting aside award.*—An award remitted under Section 499 becomes void on the refusal of the arbitrators or umpire to reconsider it. But no award shall be set aside except on one of the following grounds (namely):—

(a) corruption or misconduct of the arbitrator or umpire;

(b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;

(c) the award having been made after the issue of an order by the Court superseding the arbitration and restoring the suit;

and no award shall be valid unless made within the period allowed by the Court."

**Case Law.**

1. Where a District Judge set aside an award of the majority of the arbitrators on the supposed irregularity that, after hearing the arguments, they did not meet and discuss the matter before recording the award:

*Held.*—As the omission did not amount to misconduct or neglect of duty and responsibility within the meaning of Section 500, the award was valid and could not be set aside,

The term "misconduct" should be interpreted in the sense in which it is used in English law. It may not imply moral turpitude, but may include neglect of duty and responsibility on the arbitrators and of what Courts of Justice expect from them before allowing finality to their awards. Hence, the irregularity pointed out by the

16. (1) Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and no application has been made to set aside the award, or the Court has refused such application, the Court shall, after the time for making such application has expired, proceed to pronounce judgment according to the award.

Judgment to be according to award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

---

Judge was not neglect of duty or responsibility.— **2 S. D.**, *94*.

**2.** The parties to a suit filed petition in the Munsiff's Court, which contained the following terms:—"We have therefore decided to accept the decision of the Court to be arrived at on a local investigation and taking such other steps as may be necessary."

*Held*,—This petition constituted the Munsiff an arbitrator, and his award, when not vitiated by corruption or misconduct, was not appealable.— **1 T. L. J.**, *10*.

**3.** See also—

Or. XXXIX, r. 3.—**10 T. L. J.**, *65*.

" r. 20.—**29 T. L. R.**, *63* (=**3 T. L. J.**, *244*).

---

**Or. XXXIX, r. 16** [ = S. 501 = *Sch. II, Para 16*]

I. Section 501 of Regulation II of 1065 was as follows :—

"501. *Judgment to be according to award.*—If the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and if no application has been made to set aside the award, or if the Court has refused such application,

the Court shall, after the time for making such application has expired, proceed to give judgment according to the award, or, if the award has been submitted to it in the form of a special case, according to its own opinion on such case.

*Decree to follow.*—Upon the judgment so given a decree shall follow, and shall be enforced in manner provided in this Code for the execution of decrees. No appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award."

II. In regard to Para 16 of Schedule II to the British Indian Code, which has been adopted as Rule 16, the Indian Special Committee said :—"In regard to appeals, some change has been made. Upon this question, adopting the view of the Judicial Committee as expressed in Ghulam's case (I. L. R., 29 Cal., 167) we are strongly in favour of finality in cases of arbitration. If rights of appeal be given, the disappointed party will take advantage of every such right. To meet the difficulty expressed in the case reported in I. L. R., 25 Cal., 141 (which followed many other cases in the Calcutta High Court), we have inserted the words "or being otherwise invalid" in Sub-section (*c*) of Section 521 of the present Code. If, therefore, either party considers the award is invalid on any ground, he can apply to have it set aside. We have thought it right to give one appeal from the opinion expressed by the Court on a special case under Section 517, and to allow one appeal as from order under Sections 521, 523 and

*Order of reference on agreement to refer.*

Application to file in Court agreement to refer to arbitration.

17. (1) Where any persons agree in writing that any difference between them shall be referred to arbitration, the parties to the agreement, or any of them, may apply to any Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court.

(2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

(3) On such application being made, the Court shall direct notice thereof to be given to all the parties to the agreement, other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

---

526. And having regard to the rather wide language of the Judicial Committee in Ghulam's case, we have further thought it advisable to make it clear that an order granting an application either under Section 523 or 526 is not to be deemed a decree within the meaning of the Code ; otherwise there would be a wider right of appeal from orders under these Sections than from a decree under Section 522. The other alterations deal with the text, rather than with any question of policy or principle."

[The Rules of this Order corresponding to the Sections of the old Indian Code mentioned above, namely, 517, 521, 522, 523 and 526, are respectively Nos. 11, 15, 16, 17 and 21.]

**Case Law.**

**1.** An appeal lies from a decree passed in accordance with an award, if such decree has been passed without allowing the parties the time prescribed by law for filing objections to the award.— **9 T. L. J.,** ***400.***

**2.** Under Section 501 of the C. P. C. no appeal lies from a decree passed in accordance with the award of an arbitrator except in so far as the decree is in excess of or not in accordance with the award.

A decree passed in accordance with the award of an arbitrator cannot be challenged by way of appeal on the ground that there was no valid and legal award. The expression 'award' used in Section 501 cannot be confined in its meaning to a legal and valid award.— **14 T. L. J.,** ***452.***

Ref.—43 T. L. R., 388 ( = 17 T. L. J., 711).

**3.** See also—

Or. I, r. 8— **16 T. L. J.,** ***501.***
Or. XXXIX, r. 1.— **15 T. L. R.,** ***47.*** **1 S. D.,** ***290.***
" r. 15.— **1 T. L. J.,** ***10.***
" r. 20.— **29 T. L. R.,** ***63*** ( = **3 T. L. J.,** ***244***).

---

Or. XXXIX, r. 17 [= S. 502 = *Sch. II, Para 17*]

Sub-Rules (2) and (3) of this Rule reproduce Para 2 and 3 of Section 502 of Regulation II of 1065.

(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed in accordance with the provisions of the agreement or, if there is no such provision and the parties cannot agree, the Court may appoint an arbitrator.

Stay of suit where there is an agreement to refer to arbitration.

18. Where any party to any agreement to refer to arbitration, or any person claiming under him, institutes any suit against any other party to the agreement, or any person claiming under him, in respect of any matter agreed to be referred, any party to such suit may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to the Court to stay the suit; and the Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement to refer to arbitration, and that the applicant was, at the time when the suit was instituted and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the suit.

Provisions applicable to proceedings under Rule 17.

19. The foregoing provisions, so far as they are consistent with any agreement filed under Rule 17, shall be applicable to all proceedings under the order of reference made by the Court under that Rule and to the award and to the decree following thereon.

---

Paras 1 and 4 of that Section corresponding to Sub-Rules (1) and (4) were as follow :—

*First para.*—"When any persons agree in writing that any difference between them shall be referred to the arbitration of any person named in the agreement or to be appointed by any Court having jurisdiction in the matter to which the agreement relates, the parties thereto, or any of them, may apply that the agreement be filed in Court.

*Fourth para.*—"If no sufficient cause be shown, the Court may cause the agreement to be filed, and shall make an order of reference thereon, and may also nominate the arbitrator, when he is not named therein and the parties cannot agree as to the nomination."

Or. XXXIX, r. 18 [ = „
= *Sch. II, Para 18* ]

Or. XXXIX, r. 19 [ = S. 503
= *Sch. II, Para 19*]

The concluding words of Section 503 of the old Regulation were :—"and to the award of arbitration and to the enforcement of the decree founded thereupon."

*Arbitration without the intervention of a Court.*

Filing award in matter referred to arbitration without intervention of Court.

20. (1) Where any matter has been referred to arbitration without the intervention of a Court, and an award has been made thereon, any person interested in the award may apply to any Court having jurisdiction over the subject-matter of the award that the award be filed in Court.

(2) The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

(3) The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

---

Or. XXXIX, r. 20 [= S. 504 = *Sch. II, Para. 20*]

Para 1 of Section 504 of the old Regulation corresponding to Sub-Rule (1) was:—"When any matter has been referred,..... in the award may apply to the Court of the lowest grade having jurisdiction over the matter to which the award relates, that the award be filed in Court."

**Case Law.**

1. Under the Will executed by the father of plaintiff and defendant, Cutchi Memons, the plaintiff was entitled to certain properties, movable and immovable. Defendant having objected to the plaintiff's claim to such properties, both the parties referred the matters in dispute to arbitrators, An award was given by the arbitrators, whereby the plaintiff's claim to properties under the Will was established, and the extent of the properties to be given was specified. On an application made by plaintiff under Section 504 to enforce the award, limitation was successfully raised in defence. The application was, therefore, rejected as having been brought beyond the time allowed by law. The plaintiff brought the suit to establish her claim under the Will, and claimed in the alternative, to enforce, the award. The defendant contended, *inter alia*, that the rejection of the plaintiff's application to enforce the award being a decree operated to bar a fresh suit, and that the award of the arbitrators was invalid, as they did not give reasons for their decision, and did not examine the account books of the defendants fully.

*Held.*—An order refusing to file an award under Section 504, is analogous to an order rejecting a plaint under Clause (*c*) of Section 50 [= Or. VII, r. 11] Civil Procedure Code, and cannot, therefore, operate as a bar to a subsequent suit based on the award.

Arbitrators are not bound to give a reasoned judicial decision. They are bound to give only an intelligible decision which determines the rights of all the parties in relation to the subject-matter of the reference. They are not bound to give reasons at all.

Where a person, who is entitled to property under a Will, agrees to refer disputes relating thereto to arbitration and the arbitrators give a valid award, the right to claim under the Will becomes merged in the award. The award furnishes the only

21. (1) Where the Court is satisfied that the matter has been referred to arbitration and that an award has been made thereon, and where no ground such as is mentioned or referred to in Rule 14 or Rule 15 is proved, the Court shall order the award to be filed and shall proceed to pronounce judgment according to the award.

Filing and enforcement of such award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award.

---

basis by which the rights of the parties can be determined and constitutes a bar to any action based on the original Will (F. B.).—
**29 T. L. R.**, *63*
(= **3 T. L. J.**, *244*).

Ref.—43 T. L. R., 157
(=17 T. L. J., 629).

**2.** Where there is a reference to arbitration without the intervention of the Court and where a suit is instituted a considerable time after such reference, the arbitration not having terminated, the Court may raise a presumption that the reference has been abandoned before the litigation commenced.

Granting that the reference is still in force, it would not warrant the dismissal of the suit. A party relying on an antecedent agreement to refer matters to arbitration as a bar to the continuance of a suit should apply for a stay of the proceedings in Court. If such party takes no steps for stay of judicial proceedings and allows the case to be decided, any award, even if made during the pendency of the suit, would not affect the rights of the parties as decided by the Court.— **19 T. L. J.**, *1016*.

**3.** See also—
Or. II, r. 2.—**43 T. L. R.**, *157*
(=**17 T. L. J.**, *629*).

---

**Or. XXXIX, r. 21** [= S. 505
= *Sch. II, Para 21* ]

Section 505 of the old Regulation corresponding to Sub-Rule (1) was as follows :—

"505. *Filing and enforcement of such award.*—If no ground such as is mentioned or referred to in Section 499 or Section 500 be shown against the award, the Court shall order it to be filed, and such award shall then take effect as an award made under the provisions of this Chapter."

[Sections 499 and 500 correspond to Rules 14 and 15.]

**Case Law.**

**1.** An award was made by a board of arbitrators appointed by the parties without the intervention of the Court. The plaintiff applied for filing the award. The defendant raised various objections. The Court overruled them, ordered the award to be filed and passed a decree in terms thereof. No separate order for filing the award was, however, passed, the same being embodied in the judgment disposing of the matter itself. Against this decree, the defendant appealed.

On behalf of the respondent-plaintiff, a preliminary objection was raised regarding the competency of the appeal. It was contended that, under Clause (2) of Rule 21 of Order XXXIX, no appeal lay from a decree of the kind in question except on the ground that the same was in excess of or not in accordance with the award.

*Held.*—The appeal could be treated as one against the order for filing the award, as contemplated in Clause (1) of Rule 21 of Order XXXIX. An appeal has been expressly provided for against such an order in Section 82 (1) (*e*) of the Code, and the Court should not deprive a party of this statutory right of appeal by proceeding to judgment immediately without allowing any time for such appeal, or embodying the appellate order of filing in its final judgment which in cases of confirmation of the award is expressly declared not appealable.

The contention of the appellant based on the provisions of Section 55 of the Code of 1065 [=Or. VII, r. 14] that the award should not have been allowed to be filed, as a copy thereof had not been presented along with the application, could not stand. The Civil Procedure Code did not warrant the dismissal of a plaint by reason of the non-production of the documents referred to in Section 55. It only prohibited the reception, in evidence, of such documents without special leave. When, however, the document was received in evidence, the Appellate Court was bound to consider the same and could not reject it.

Even though a specific reference is contained in the reference requiring the opinion of the majority to prevail, notice should have been given to all the arbitrators of the meeting, and if the evidence had been recorded and the parties heard, and as a result of the conjoint deliberations of the arbitrators a particular decision has been arrived at by all, or by a majority of the arbitrators, such decision, if reduced to writing, would be perfectly valid in spite of some of the arbitrators not having affixed their signatures thereto.

When the parties have mutually agreed that the decision of the majority at the meetings having a quorum as prescribed therein would be binding on the parties the same could not be impeached on the ground of the absence of any of the arbitrators at any of such meetings inclusive of the last one, if the absentee arbitrators had notice of the meeting of the board at which the final decision was proposed to be resolved upon.

Although the principles above formulated will have to be followed in general cases, they cannot be taken to govern cases where by mutual consent of parties a different state of affairs is arranged for.

It is a cardinal rule of the interpretation of deeds that the same word appearing in different parts of the deed are presumed to be intended to bear the same meaning.

An award could not exceed the submission or the power given by the submission in the particular case. If it is in excess of the same, it will be bad *in toto*. Of course, if the excess is separable from the other portion, it will be held void only as regards the portion which is in excess of the submission. If, however, the excess is so mixed up with the other portions or if its decision on the matters covered by the reference has been affected by such excess, the whole award should be treated as a nullity. As to the effect of the various statements and the question how far the conclusions arrived at by the arbitrators are warranted by the evidence before them, these are matters which could not be considered by the Court where the filing of the award is sought for, as the arbitrators constitute by the consent of the parties the sole Judges of fact and law on the questions arising before them, and the Court's jurisdiction to interfere with their decision thereon is circumscribed by the statutory provisions on the subject. The arbitrators need not give their reasons for their conclusions and they are not even bound to record anything of the proceedings.

The award could be set aside only if there is corruption, misconduct or partiality on the part of the arbitrators, or an error of law apparent on the face of it which could refer only to some legal proposition in the award or actually incorporated thereto as its basis, which proposition is *per se* erroneous,

22. The Forms set forth in Appendix G of the First Schedule with such variations as the circumstances of each case require, shall be issued for the respective purposes therein mentioned.

Forms.

---

## ORDER XL.

### *Appeals from Original Decrees.*

1. (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

Form of appeal.

What to accompany memorandum.

(2) The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

Contents of memorandum.

---

The word "misconduct" as applied to arbitrators does not necessarily imply moral turpitude; but it includes neglect of the duties and responsibilities of the arbitrators and what Courts of Justice expect from them before allowing finality to their awards. The truth of the allegations made as amounting to misconduct will have to be examined, and it will have to be considered whether the allegations could be treated as such in the eye of the law.

Exclusion of a party from the meetings of the board at which discussions between arbitrators as to the conclusions to be arrived were held, does not constitute misconduct.

The user of the plaintiff by the convenor to purchase some tobacco for him with the convenor's money could not *per se* amount to misconduct on the part of the convenor so as to invalidate the award, in the absence of anything to show that the convenor has been influenced thereby or that the award has been made as the result of the obligation. What is required in such cases is to see whether the intention is to corrupt the umpire or that he has been influenced thereby.—**43 T. L. R.,** *388* (= **17 T. L. J.,** *711*).

2. See also—

Or. II, r. 2.— **43 T. L. R.,** *157* (=**17 T. L. J.,** *629*).

---

**Or. XXXIX, r. 22** [= „ = *Sch. II, Para 23*]

---

**Or. XL** :—1. An assignee of an appealable decree takes the rights of his assignor, subject to the condition that it may be lost or modified by the Appellate Court's order. He is not a necessary party in appeal and other subsequent proceedings, though he may become a party thereto to enable him to protect his own interests.

The final decree in such a case passed in pursuance of the Appellate Court's order, will bind the assignee, even though he was not a party in the proceedings wherein that decree was passed.— **9 T. L. R.**, *76.*

II. A person who accepts an assignment of a decree against which an appeal is preferred or which is capable of being appealed against, will be bound by the decree of the Appellate Court.— **9 T. L. R., App.**, *21.*

III. The appellant's claim for re-imbursement of arrears paid was not included in the subject-matter of the appeal claim on which fees have been paid. In the absence of an appeal, the finding of the Zillah Court on the question must be accepted as final (F. B.).— **13 T. L. R.**, *59.*

IV. As (in the case) the administration of the trust was vested in the trustees jointly, all the trustees should have been made parties in appeal. The appeal against one alone of the trustees was, therefore, not maintainable. The omission to implead the other trustees was more than irregularity, and the Appellate Court was bound to see that all necessary parties were before it.— **1 T. L. J.**, *203.*

V. It is a safe maxim for a Court of Appeal to be governed by that an objection which, if taken, might have been cured and which has not been taken in the Court below, shall not be taken in the Court of Appeal. (*Obiter*).— **30 T. L. R.**, *251.*

---

**Or. XL, r. 1** [= S. 518 = *Or. XLI, r. 1*]

I. This reproduces Section 518 of Regulation II of 1065 with some changes in the first Para of that Section corresponding to Sub-Rule (1). The first Para was as follows:—

"*Form of appeal. What to accompany memorandum.*—The appeal shall be made in the form of a memorandum in writing presented by the appellant, and shall be accompanied by a copy of the decree appealed against, and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded."

II. For Form of Memorandum of Appeal, see Appendix H, Form No. 1.

III. See under Section 76.

### Case Law.

**1.** It is wrong to allow, in appeal, a plea of want of jurisdiction based on facts to be ascertained, to be raised for the first time. The plea of want of jurisdiction, in the case, was not a pure question of law, but required to be proved as any other disputed fact.

The onus of substantiating such a plea, when taken in proper time, is on those who urge it, the law making a presumption in favour of the existence of jurisdiction until the contrary is shown.— **4 T. L. R.**, *68.*

**2.** The point for decision by the Courts was whether the plaintiff's claim to Karanavanship was well-founded and this point having been found against plaintiff by both the lower Courts, is is against all judicial precedents to allow plaintiff to amend his case in appeal, and to invoke the aid of Courts to try in the same suit the new case set up in appeal. The effect of granting such concessions to plaintiffs would be to encourage frivolous litigation.—**8 T. L. R.**, *46.*

**3.** The law makes it obligatory on appellants to produce a copy of the lower Court's judgment along with the appeal memo, unless it is dispensed with by the Appeal Court. The delay, even though it may be of more than three years in granting the copy of the judgment, was not delay for which the appellant was responsible.— **12 T. L. R.**, *198.*

**4.** The Dewan of Travancore sued to recover a sum of money due from the defendant to the Sri Padmanabha Swami Temple. The defendant contended, *inter alia*, that the Dewan of Travancore was not competent to sue on behalf of the Temple and that he did not owe all the money sued for. The

first Court decreed the plaintiff's suit *in toto*. The defendant appealed only with regard to the sum of money not admitted by him to be due and raised objection regarding the competency of the Dewan of Travancore to sue on behalf of the Sri Padmanabha Swami Temple.

*Held.*—The competency of the Dewan to sue having been accepted by the defendant in relation to the sum adjudged by the decree and not questioned in appeal, the finding became final between the parties and could not be re-opened (F. B.).

*Per Krishnan Pandalai, J.*—If the Appellate Court should find the claim barred by limitation, it could not for that reason reverse the decree to the extent it has been appealed against, as the unappealed portion is based on the view that there is no bar of limitation, and that view is final between the same parties. The only consistent course is in such cases to dismiss the appeal or reverse the whole decree. The ground that the plaintiff is not competent to sue is like the defence of limitation one that goes to the root of the claim and cannot be allowed to prevail in the case, as the defendant had not appealed against two-thirds of the decree which the plaintiff has got on the same bond.— **5 T. L. J.**, *48*.

**5.** An objection to the maintainability of a suit on the ground that it is one for partial partition will not be allowed to be raised for the first time in special appeal.— **5 T. L. J.**, *123*.

**6.** One of the grounds raised by the Sirkar appellant was that the plaintiff (respondent) was not entitled to the reliefs claimed by him, inasmuch as he was dismissed for misconduct.

This point was not expressly raised or even suggested in the defendant's written statement and was not covered by any issue settled in the case. To allow such a vital question to be raised at this stage would, therefore, be very embarrassing to the plaintiff. The contention was, therefore, overruled.— **34 T. L. R.**, *281*.

**7.** (1) Where there are more defendants than one in a suit and the decree appealed from affects each of them individually and each of the appeals preferred or all of them, when treated as a single consolidated appeal, had not been directed against the whole decree, it is not competent for some of the defendants to associate with other defendants as co-appellants without having previously obtained copies of the decree appealed from and without being in a position to file such copies together with the appeal memoranda.

(2) The provision contained in Section 513 of the Civil Procedure Code that the appeal presented by the appellant shall be accompanied by a copy of the decree appealed against, is mandatory (F. B.).— **35 T. L. R.**, *1*.

**8.** The plaintiff, alleging that he was the real owner of the plaint property and that the second defendant in whose name the document stood was only a benamidar, brought the suit for the cancellation of a sale deed executed by the second defendant in favour of the first defendant in respect of the plaint property. The Courts below accepting the plaintiff's allegations, decreed the suit.

The first defendant preferred the special appeal and took for the first time before the High Court the plea of *bona fide* purchase for value from the ostensible owner without notice of the defect in title.

*Held.*—(1) On proof of the *benami* character of the purchaser, the real owner established a *prima facie* case against the purchaser who was then called upon to prove that he had paid value and that he had made the purchase *bona fide* and without notice.

(2) The first defendant could not be allowed at that stage to raise the plea inasmuch as the issue which such a plea would raise was not purely one of fact but of mixed law and fact. It would be taking the opposite party by surprise if, on the

evidence on record not let in with reference to the particular defence, the first defendant were allowed to substantiate his plea.—

**10 T. L. J.,** *1.*

**9.** The Vakil for the appellant attempted to submit at the last stage of his argument in appeal in the High Court a new contention to the effect that, before the suit, there was a reference to arbitrators who had pronounced an award, and therefore the suit was not maintainable except as one for enforcing an award, in which event it would be barred by limitation. This was an entirely new contention which had not been raised in the lower Court or even in the memorandum of appeal to the High Court.

*Held* (While declining to permit the appellant's Vakil to raise the plea).—

Unless the circumstances are wholly exceptional, appellants must be strictly held to the grounds of appeal which they think proper to set forth in the formal documents which are demanded from them. The object of indicating in detail the grounds of appeal is that the respondent parties may be accurately and precisely informed of the case which they have to meet. Their efforts are naturally directed to the contentions which are put forward by the appellants. They are entitled to treat as abandoned contentions which are not set forth. If in exceptional cases parties desire to add new grounds to those of which they have given notice, it will usually be convenient, by a substantive application, to apply to the indulgence of the Court which is to hear the appeal.— **11 T. L. J.,** *389.*

**10.** There is nothing in Sections 513, 556 [new Section 86] or 591 [new Section 91], C. P. C., which precludes the Court after admitting and registering a second appeal from insisting on the production of copies of judgments and decrees or orders of Courts of first instance, before it will further proceed with second appeal (F. B.).—

**37 T. L. R.,** *12.*

Ref.—15 T. L. J., 190.

**11.** Section 513 lays down a mandatory provision which no Court has the power to relax. A memorandum of appeal presented without a copy of the decree appealed against cannot, in view of the imperative provision of Section 513, be accepted by the Court as a good memorandum in law. If, for any reason, such a memorandum is allowed to remain in Court and the copy of the decree appealed against is produced before the memorandum is rejected or returned, the appeal memorandum should in law be viewed as having been presented only on the date when the copy of the said decree was produced (F. B.)—

**13 T. L. J.,** *354.*

**12.** When a court accepts a new case set up which is inconsistent with the pleadings, the Court acts irregularly.

"It is impossible to conclude parties by inferences of fact which are not only not consistent with the allegations that are to be found in the plaint which constitute the case the defendant has to meet, but which are in reality contradictory of the case made by the plaintiff. It will introduce the greatest amount of uncertainty into judicial proceedings if the final determination of causes is to be founded upon inferences at variance with the case that the plaintiff has pleaded and by joining issue in the cause has undertaken to prove" (11 M. L. A., 7).—

**13 T. L. J.,** *409.*

Ref.—42 T. L. R., 327 (= 16 T. L. J., 253).
Rel.—18 T. L. J., 449.

**13.** A litigating party can only succeed *secundam allegata et probatis*, and a Court of Appeal should not allow him to set up on appeal a case which should have been but was not, put forward by him in the Court of first instance. The severity of this rule has no doubt been relaxed so as to cover cases which, though not specifically put forward in the trial Court, are nevertheless involved in the pleadings or consistent with the case thereby made. But this concession

has never been extended to cases which are not only not involved in the pleadings, but are inconsistent with the case thereby made, and have been again and again repudiated by the party who subsequently seeks to rely on them.

To permit the plaintiffs to take advantage of the defendants' plea and claim relief on that basis on the evidence on record would be springing a surprise on the defendants, and would seriously prejudice them, as the question of their liability on that basis has not been properly fought out in the Court below.

"If a point was not taken before the tribunal which hears the evidence, and evidence could have been adduced which by any possibility would prevent the point from succeeding, it cannot be taken afterwards. You are bound to take the point in the first instance to enable the other party to give evidence."—**42 T. L. R.,** *327* (= **16 T. L. J.,** *253*).

Ref.—19 T. L. J., 481.

**14.** In an appeal against the final decree in a partition suit, it is open to the appellant to question the correctness of the preliminary decree or order for partition when no appeal has been preferred therefrom within the time allowed by law.

If an appeal is preferred and the same comes to be rejected for any of the grounds mentioned in Section 50 [ = Or. VII, r. 11 ], such presentation will be no bar to a fresh appeal. Under Section 551 [new Section 85 (2) & Or. XXII, r. 11 ], the principle underlying Section 52 [ = Or. VII, r. 13 ] is clearly applicable to memoranda of appeals (F. B.).— **44 T. L. R.,** *315* ( = **18 T. L. J.,** *996* ).

**15.** The second respondent in the appeal put in an objection memorandum under Order XL, Rule 21, setting forth the following grounds.

(1) The lower Court wrongly directed the second defendant to suffer his costs when his contentions were upheld.

(2) The properties allowed to the second defendant were wrongly made liable for the arrears adjudged to the plaintiffs.

He paid institution fee on the first ground only, and therefore on 12-2-'04, the Deputy Registrar ordered him to state the amount of arrears adjudged to the plaintiffs and to pay Court fee thereon. One week was allowed to cure this defect. On 1-4-1104, the respondent presented a petition praying for permission to withdraw the second ground. A Division Bench which heard the petition referred for the decision of a Full Bench the question of the competency of a Court to allow withdrawal of grounds in insufficiently stamped appeal memoranda.

*Held.—Per Venkita Rao, J.*—An appellant may withdraw a part of the claim even though proper Court fee has not been paid on the reliefs as claimed in his memo of appeal.

*Per Parameswaran Pillai, J.*—(1) At the time of the presentation of a plaint or memorandum of appeal, the plaintiff or appellant may, without the permission of the Court, abandon any of the reliefs claimed therein and in respect of which the Court fee leviable has not been paid, and the Court is not competent to refuse to file the plaint or memorandum of appeal if the fee payable on the reliefs not abandoned has been paid.

(2) Even under Order VII, Rule 11, Clause (*c*), a plaint or memorandum of appeal cannot be wholly rejected for non-payment of Court-fees leviable on some of the reliefs, if the plaintiff or appellant is willing to forego that part of the claim or reliefs for which Court-fee has not been paid.

*Per A. Venkitarama Aiyer, Ag. C. J.* (Dissenting).—No relief in an insufficiently stamped plaint, appeal memorandum or objection memorandum can be allowed to be withdrawn without payment of the deficit Court-fee and the same considered and disposed of on the merits without such

Grounds which may be taken in appeal.

2. The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the Court under this Rule:

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

Rejection or amendment of memorandum.

3. (1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

---

payment. The Court is not competent to allow withdrawals of grounds on insufficiently stamped appeal memoranda.—

**45 T. L. R.,** *273*
(= **19 T. L. J.,** *1024*).

**16.** See also—

Sec. 76.— **13 T. L. R.,** *93.*
**14 T. L. R.,** *1.*
**14 T. L. J.,** *220.*
**43 T. L. R.,** *212*
(= **17 T. L. J.,** *356*).
**17 T. L. J.,** *517.*

Or. I, r. 13.— **32 T. L. R.,** *16.*

Or. XL, r. 21.—**34 T. L. R.,** *222*
(= **9 T. L. J.,** *217*).

**Or. XL, r. 2** [ = S. 514 = *Or. XLI, r. 2* ]

The corresponding Section of Regulation II of 1065 was as follows :—

"514. *Appellant confined to grounds set out.*—The appellant shall not, without the leave of the Court, urge or be heard in support of any other ground of objection, but the Court in deciding the appeal shall not be confined to the grounds set forth by the appellant :

Provided that the Court shall not rest its decision on any ground not set forth by the appellant, unless the respondent has had sufficient opportunity of contesting the case on that ground."

**Case Law.**

**1.** An Appellate Court is incompetent to interfere with any portion of the original decree not appealed against.—

**3 T. L. R.,** *33.*

**2.** When a suit has been dismissed against one of two defendants by the Court of first instance and the defeated plaintiff has not appealed against that part of the decree, the addition of the defendant, against whom the suit has been dismissed, to the array of parties does not empower the Appellate Court to pass against him a decree which the Court of first instance declined to pass and in the decision of which Court the plaintiff chose to acquiesce.—

**25 T. L. R.,** *91.*

Ref.—6 T. L. J., 172.
19 T. L. J., 1016.

**3.** See also—

Or. XL, r. 1.—**5 T. L. J.,** *48.*
**11 T. L. J.,** *339.*
,, r. 21.—**6 T. L. J.,** *172.*

**Or. XL, r. 3** [ = S. 515 = *Or. XLI, r. 3* ]

(2) Where the Court rejects any memorandum, it shall record the reasons for such rejection.

(3) Where a memorandum of appeal is amended, the Judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.

4. Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.

---

The third Para of Section 515 of Regulation II of 1065, corresponding to Sub-Rule (3) was as follows :—

"When a memorandum.........in this behalf, shall attest the amendment by his signature."

---

**Or. XL, r. 4 [= S. 516 = *Or. XLI, r. 4*]**

In place of the word "vary," Section 516 of the old Regulation had the word "modify."

**Case Law.**

1. The plaintiff, whose claim on a debt-bond assigned to him by 3rd defendant was dismissed against 1st and 2nd defendants, but decreed against 3rd defendant the assignor, failed to appeal. On 3rd defendant's appeal, however, the lower Appellate Court gave a decree in plaintiff's favour against 1st and 2nd defendants.

*Held* (on special appeal).—It is not competent to the lower Appellate Court to pass such a decree, and Section 321 of the old Civil Procedure Code does not apply to the case.

The alleged debtors and the assignor of the debt were, under no circumstances, jointly liable to the assignee, and the ground upon which the 3rd defendant's appeal was to be decided could not be said to be common to him and the plaintiff. Third defendant could only appeal regarding his own rights and liabilities and could not call upon the Court to decide in plaintiff's favour matters upon which the plaintiff did not choose to appeal. Section 321 (Regulation II of 1037) which empowered an Appellate Court to reverse a decree in favour of a party who failed to appeal, did not warrant a decree in plaintiff's favour, and against two of the defendants on the appeal of the third defendant. That Section had been construed as enabling an Appellate Court to review the whole decision in favour of all the plaintiffs or of all the defendants on the appeal of one of them, when it proceeded on a common ground; but a decree could not be passed in appeal against a defendant and in favour of plaintiff on the appeal of a co-defendant.

[Section 321 was as follows :—"If there be two or more plaintiffs or two or more defendants in a suit, and the decision of the lower Court proceed on any ground common to all, any one of the plaintiffs or defendants may appeal against the whole decree, and the Appellate Court may reverse or modify

the decree in favour of all the plaintiffs or defendants."]— **2 T. L. R.,** *26.*

**2.** Where a decree deals only with and decides the disputes between the plaintiffs on one side and defendants as a body on the other and not the disputes between defendants *inter se*:

*Held.*—One defendant cannot appeal against other defendants (F. B.).— **14 T. L. R.,** *1.*

**3.** In a suit for recovery of money due on a joint hypothecation deed, the first Court passed an *ex parte* decree against all the defendants; but on the application of one of the defendants, the *ex parte* order as against him alone was set aside. At the re-trial, the Munsiff found that the hypothecation debt was discharged and dismissed the plaintiff's suit as against all the defendants. The District Judge modified the Munsiff's decree by restoring the *ex parte* decree against all the remaining defendants who failed to get the same cancelled. On special appeal:

*Held.*—The decision of the District Munsiff was right.— **19 T. L. R.,** *37.*

Ref.—43 T. L. R., 99 (=17 T. L. J., 644).

**4.** The only Section under which a party can claim the benefit of another party's appeal is Section 516. That Section applies only to co-plaintiffs or co-defendants who have the same interest and not adverse parties though they may have identity of interest. Therefore, a plaintiff who has not appealed or put in cross-objections against the portion of the lower Court's decree that went against him is not entitled to the benefit of an appeal by a defendant who appealed against the same and who had identity of interest with plaintiff.— **3 S. D.,** *17.*

**5.** The plaintiff brought the suit to enforce a chitty security bond executed by defendants 1 to 3 on the ground that the defendants had committed default in paying the subscriptions. The second defendant alone contested the suit. The primary Court upheld the plaintiff's case and gave him a decree; but the lower Appellate Court held that there was no default and reversed the decree of the primary Court. The appeal to the lower Appellate Court was by the second defendant alone, and to that appeal the other defendants were not parties. The plaintiff filed the special appeal, and contended that, inasmuch as the second defendant alone had appealed to the lower Appellate Court, that Court erred in reversing the primary Court's decree as regards the other defendants also.

*Held.*—The lower Appellate Court was justified by the terms of Section 516 of the Civil Procedure Code in setting aside the primary Court's decree even as against the defendants who were not parties to the appeal before that Court. That Section provided that one of several plaintiffs or defendants might obtain a reversal of the whole decree, when it proceeded on any ground common to all the plaintiffs or to all the defendants. If one of such persons appealed, he really occupied a representative character towards all others who stood on a common ground with him, and those others were necessarily privy to the appeal. Upon his appeal the whole case was opened up; and the respondent might under Section 532 press any objections to the decree which he could have urged by way of appeal regardless of the fact that others were not parties.

The lower Court's finding that no default had been made by the defendants rendered the suit devoid of any foundations. It is unstateable that, in those circumstances, because the other defendants were not formally parties to the appeal, the liability based on default still attached to them, though not to the second defendant. It is to avoid such obvious anomaly or incongruity that power is given by Section 516 to reverse or vary the whole decree, even in the absence of some of those against whom

the decree had been passed, where the decree proceeded on a ground common to them and the appellant.— **12 T. L. J.**, *60.*

**6.** The plaintiffs filed a suit for declaration and recovery of possession of the plaint items which were claimed under a gift from the husband of the first plaintiff and father of the other plaintiffs. The suit was dismissed. On appeal by the second plaintiff alone (the other plaintiffs not having been made parties to the appeal), the High Court reversed the whole decree, not only in favour of the appellant 2nd plaintiff, but of all the plaintiffs. In review, it was contended, *inter alia*, that the decree of the lower Court should have been set aside only to the extent of the appellant second plaintiff's claim, the plaintiffs having in law separate interests in the subject-matter of the suit.

*Held.*—Under Section 516 of the Civil Procedure Code, the Appellate Court was competent to reverse the decree of the lower Court and grant a decree in favour of all the plaintiffs notwithstanding that one plaintiff alone appealed against the decree of the lower Court and the other plaintiffs had not even been impleaded as respondents to the appeal.

The language of Section 516 shows that, provided that the decree appealed against has proceeded on any ground common to all the plaintiffs or all the defendants, any one of the plaintiffs or defendants may question in appeal the whole decree and the Appellate Court becomes properly seized of the whole case and competent to reverse or modify the decree in favour of all the plaintiffs or defendants. The Section does not require the impleading of the other unsuccessful plaintiffs or defendants as respondents in order to enable the Court to interfere with the whole decree.—

**33 T. L. R.**, *129*
(=**12 T. L. J.**, *391*).

**7.** The special appeal arose out of a suit to recover 42 Fs. for damages from defendants 1 to 5 for having removed the fruit from four tamarind trees stated to be in the possession of plaintiff under a mortgage from the ancestor of defendants 9 to 11. The defendants admitted taking the fruit but claimed to be in possession as lessees under defendants 6 to 8 who were the real owners. The District Munsiff found in favour of the title of the defendants 9 to 11 and the enjoyment of the plaintiff and gave the plaintiff a decree for 28 Fs., as the price of the tamarind fruit removed, against defendants 1 to 5, and made all the contesting defendants liable for the plaintiff's costs. The 8th defendant alone appealed. The District Judge allowed the appeal holding that defendants 9 to 11 had no title to the properties in dispute and that plaintiff had never been in possession of them.

It was contended in the High Court that the decree of the trial Court against the 8th defendant being only for costs, the lower Appellate Court was wrong in interfering with that part of the decree which made defendants 1 to 5 liable to pay to the plaintiff 28 Fs.

*Held* (Overruling the contention).—The lower Appellate Court acted rightly.

The 8th defendant having appealed against the whole decree and his appeal having been based on a ground common to himself and all the defendants 1 to 5, *viz.*, that he and defendants 6 and 7 were entitled to the trees and that the plaintiff and the plaintiff's mortgagor had no manner of right over the plaint property, the lower Appellate Court was right in interfering with the judgment of the trial Court even as against the defendants who did not appeal.

The decision of the case depends upon a correct interpretation of Section 516. In deciding whether the Court can exercise this jurisdiction two things are necessary:— (1) The decree appealed against must proceed on some point common to all the defendants or plaintiffs, and (2) the defendant (or plaintiff) who appeals must do so against the whole decree.

*Stay of proceedings and of execution.*

Stay by Appellate Court.

5. (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

Stay by Court which passed the decree.

(2) Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

---

If the decree proceeds on more than one ground, it is sufficient that one of the grounds is common to all the defendants.— **15 T. L. J.,** *434.*

Ref.—18 T. L. J., 301.

**8.** Under Section 516, C. P. C., the interference by the Appellate Court on behalf of the non-appealing plaintiffs or defendants is discretionary with the Court. It is doubtful whether the omission to exercise that discretion would be a ground for preferring a second appeal and it is also doubtful whether an appeal will lie at the instance of the party who did not appeal to the lower Appellate Court.

It is however open to the High Court to treat the appeal as an application in revision in cases in which a subordinate Court has omitted to exercise a jurisdiction conferred on it by law.— **16 T. L. J.,** *80.*

**9.** The only conditions necessary for the applicability of Rules 4 and 32 of Order XL are that there should be a ground common to the appellant and the other defendants against whom also the decree has to be reversed, and that the appeal should have been preferred against the whole decree and not with respect to that portion alone which affects the appellant. Even if other grounds are raised which cannot be said to be common to the appellant and the other defendants in the case, the benefit of this provision could be invoked.— **18 T. L. J.,** *301.*

**10.** See also—

Sec. 76.— **13 T. L. R.,** *93.*
Or. IX, r. 13.— **1 T. L. J.,** *233.*
,, XL, r. 1.— **35 T. L. R.,** *1.*

---

**Or. XL, r. 5** [= S. 517 = *Or. XLI, r. 5*]

1. Section 517 of Regulation II of 1065 was as follows:—

"517. *Execution of decree not stayed solely by reason of appeal.*—Execution of a decree shall not be stayed by reason only of an appeal having been preferred against the decree; but the Appellate Court may, for sufficient cause, order the execution to be stayed.

*Stay of execution of appealable decree before time for appealing has expired.*—If an application be made for stay of execution of an appealable decree before the expiry of the time allowed for appealing therefrom, the Court which passed the decree may for sufficient cause order the execution to be stayed:

Provided that no order shall be made under this Section unless the Court making it is satisfied—

(3) No order for stay of execution shall be made under Sub-rule (1) or Sub-rule (2) unless the Court making it is satisfied—

(*a*) that substantial loss may result to the party applying for stay of execution unless the order is made;

(*b*) that the application has been made without unreasonable delay ; and

(*c*) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Notwithstanding anything contained in Sub-rule (3), the Court may make an *ex parte* order for stay of execution pending the hearing of the application.

---

(*a*) that substantial loss may result to the party applying for stay of execution unless the order is made ;

(*b*) that the application has been made without unreasonable delay ; and

(*c*) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him."

II. In regard to the addition of the words at the beginning of Sub-Rule (1)—"An appeal shall not......may order," the Indian Special Committee said :—

"The Committee have added words to Section 545 in order to make it clear that proceedings under a decree as well as execution can be stayed by an Appellate Court ; the recognition of preliminary decrees makes it the more necessary to have an express power to this effect instead of resting on an inherent power [ Balkishen Sahu V. Khugnu (I. L. R., 31 Cal., 722)]. The Committee have introduced express words authorising an *ex parte* stay, as the need for such an order constantly arises in practice."

III. For Form of Security bond, see Appendix H, Form No, 2.

**Case Law.**

1. Where an unconditional *interim* order is made by the High Court or an Appellate Court so as to affect the further progress of the proceedings pending before a subordinate Court and where either notice of such order is given to the latter Court by an official communication or the said Court is otherwise credibly informed of such order, the said order takes effect from the moment of the receipt of such communication or information and all subsequent further proceedings inconsistent with such order are void. The mere fact that an order of the nature above indicated is made by a superior tribunal does not affect the jurisdiction of the subordinate Court in respect of acts done, orders made or directions given, without knowledge of the said order (F. B.).—

**40 T. L. R.,** ***237***
**(=15 T. L. J., *52*).**

Ref.—19 T. L. J., 861.

2. The Appellate Court to which a pauper appeal is preferred is competent to stay execution of the decree under Order XL, Rule 5, even before the admission of the appeal. The Legislature has cautiously worded the Rule so as to enable the Appellate Court to exercise the power before

Security in case of order for execution of decree appealed from.

6. (1) Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

(2) Where an order has been made for the sale of immovable property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment-debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.

No security to be required from the Government or a public officer in certain cases.

7. No such security as is mentioned in Rules 5 and 6 shall be required from the Dewan of Travancore or, where the Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity.

---

the appeal is admitted. The placing of the Rules regarding stay of execution just before those relating to procedure on admission of the appeal in the Code is also indicative of the object of the Legislature.

Or. XLIII, Rule 1, which relates to pauper appeals contemplates presentation of two separate documents, namely, a memorandum of appeal and an application for leave to appeal as pauper. The dismissal of the pauper application does not involve dismissal of the appeal. The appeal may still be regarded as an existing appeal if the appellant desires to continue it as an ordinary one by paying the court fee.—

17 T. L. J., *477*.

3. Proceedings in a subordinate Court would not be rendered invalid merely because they were taken by such Court after the passing of a stay order by a superior Court. To render such proceedings invalid, information of the passing of the stay order must have been communicated to the subordinate Court by the Court issuing the stay order.— 19 T. L. J., *861*.

Or. XL, r. 6 [ = S. 518 = *Or. XLI, r. 6* ]

I. The changes made by this Rule in Section 518 of the old Regulation are indicated below :—

"518. (1) *Where* an order is made...... require security to be *taken* for the restitution of any property which may *or has been* taken..........security.

(2) *Where* an order has been *made*...... in execution of a decree *for money*...... judgment-debtor, be stayed until the appeal is disposed of, on such terms as to giving security or otherwise as the Court which passed the decree thinks fit."

II. The Indian Special Committee said:—

"The Committee have modified this Rule in order to make it clear that security may

8. The powers conferred by Rules 5 and 6 shall be exercisable where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree.

Exercise of powers in appeal from order made in execution of decree.

*Procedure on admission of appeal.*

9. (1) Where a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

Registry of memorandum of appeal.

(2) Such book shall be called the Register of Appeals.

Register of Appeals.

10. (1) The Appellate Court may, in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both:

Appellate Court may require appellant to furnish security for costs.

Provided that the Court shall demand such security in all cases in which the appellant is residing out of Travancore, and is not possessed of any sufficient immovable property within Travancore other than the property (if any) to which the appeal relates.

Where appellant resides out of Travancore.

(2) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal.

---

be required though the property has previously been taken in execution [see Hukum Chand Boid V. Kamalanand Singh (I. L. R., 33 Cal., 927)]."

III. For Form of Security bond to be given during the pendency of appeal, see Appendix H, Form No. 3.

**Or. XL, r. 7 [ = S. 519 = *Or. XLI, r. 7*]**

**Or. XL, r. 8 [ = „ = *Or. XLI, r. 8*]**

In regard to the British Indian Rule reproduced here, the Indian Special Committee said :—

"The Committee have added this Clause to meet particularly the case where the litigant does not quarrel with the decree but appeals from an order passed in execution of that decree (I. L. R., 28 Cal., 734)."

**Or. XL, r. 9 [ = S. 520 = *Or. XLI, r. 9*]**

**Case Law.**

See Sec. 116.—**30 T. L. J.,** *239* (= **4 T. L. J.,** *221*).

**Or. XL, r. 10 [ = S. 521 = *Or. XLI, r. 10*]**

Restoration of appeal rejected.

(3) Where an appeal is rejected under this Rule, the appellant may apply for an order to restore the appeal and if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the Court shall restore the appeal to its file upon such terms as to security for costs or otherwise as it thinks fit.

(4) No order for restoration shall be made unless notice of such application has been served upon the respondent.

Day for hearing appeal.

**11.** (1) The Appellate Court shall fix a day for hearing the appeal.

(2) Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

---

I. Sub-Rules (1) and (2) reproduce Section 521 of Regulation II of 1065. In the Proviso to Sub-Rule (1), the old Section had the words "independent of" in the place of "other than."

II. Rule 10 of the British Indian Code contains only Sub-Rules (1) and (2).

III. Sub-Rules (3) and (4) are new and have been added by the Select Committee.

IV. For Form of Security for Costs of Appeal, see Appendix H, Form No. 4.

**Case Law.**

**1.** The provisions of Section 521 are wide enough and vest a discretion in the Court as to extension of time as well before as after the time once fixed for the deposit of the respondent's costs by the appellant has expired.— **17 T. L. R., App.** ***41.***

**2.** An order rejecting an appeal under Section 521 for failure to deposit costs is neither a decree as defined in Section 2 of the Code, nor an order falling within any of the Clauses of Section 557 [new Section 82 and Or. XLII, r. 1], and is, therefore, not appealable.—**33 T. L. R.,** ***284*** (= **7 T. L. J.,** ***381***).

Rel.—13 T. L. J., 396.

Fol.—16 T. L. J., 80.

**3.** The District Court by a judgment dismissed an appeal before it for failure of the appellant to comply with an order directing him to deposit the day's costs of the respondent. A decree was also prepared in accordance with the judgment.

A second appeal was preferred to the High Court.

*Held.*—No second appeal lay as there was, in law, no decree passed by the District Judge in the appeal before him. The order dismissing the appeal was neither a decree as defined by Section 2 of the Civil Procedure Code nor an order falling within Section 557 [new Section 82 and Or. XLII, r. 1] of that Code, and was, consequently, not appealable.— **13 T. L. J.,** ***396.***

**4.** An Appellate Court has jurisdiction to direct an appellant who has filed the appeal *in forma pauperis* to furnish

12. (1) The Appellate Court shall send notice of the appeal to the Court from whose decree the appeal is preferred.

Appellate Court to give notice to Court whose decree appealed from.

(2) Where the appeal is from the decree of a Court, the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

Transmission of papers to Appellate Court.

(3) Either party may apply in writing to the Court from whose decree the appeal is preferred, specifying any of the papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of, and given to, the applicant.

Copies of exhibits in Court whose decree appealed from.

---

security for costs of the appeal. The discretion to demand security for costs under Order XL, Rule 10, is not taken away by anything contained in Order XLIII.

The discretion, however, must be exercised judicially. The fact that, before obtaining leave for filing an appeal *in forma pauperis*, the appellant has to satisfy the Court that he has a good case cannot be overlooked. Some particular circumstances must be shown, such as that the appellant has been acting in a vexatious or improper manner or some like ground (F. B.)—

**44 T. L. R.,** *455*
**(=19 T. L. J.,** *250*).

**Or. XL, r. 11** [= S. 523 = *Or. XLI, r. 12*].

It may be noted here that Rule 11 of the British Indian Code has not been adopted. It empowers the Appellate Court to dismiss the appeal without sending notice to the Court from whose decree the appeal is preferred and without serving notice on the respondent or his pleader. The British Indian Rule corresponds to Section 551 of the Civil Procedure Code of 1882.

In the Bill which became Regulation II of 1065, Section 551 of the Indian Code was adopted, But the Select Committee who reported on that Bill omitted the provision. They said :—"The High Court were not for its adoption, and it appears unsafe to allow power to dismiss appeals in the summary way contemplated without reference to the original records and before hearing both sides. The provision is likely to operate injuriously to the interests of justice, especially where a tendency for a hasty clearing of the file exists."

Rule 11 of the Indian Code has provided for the Court sending for the records if it thinks fit to do so.

**Or. XL, r. 12** [= S. 522 = *Or. XLI, r. 13*].

For Form of Intimation to lower Court of Appeal, see Appendix H, Form No. 5.

13. (1) Notice of the day fixed under Rule 11 shall be affixed in the Appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided for the service on a defendant of a summons to appear and answer; and all the provisions applicable to such summons and to proceedings with reference to the service thereof, shall apply to the service of such notice.

Publication and service of notice of day for hearing appeal.

(2) Instead of sending the notice to the Court from whose decree the appeal is preferred, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to.

Appellate Court may itself cause notice to be served.

14. The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard *ex parte*.

Contents of notice.

*Procedure on hearing.*

15. (1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

Right to begin.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

16. (1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

Dismissal of appeal for appellant's default.

(2) Where the appellant appears and the respondent does not appear, the appeal shall be heard *ex parte*.

Hearing appeal *ex parte*.

---

Or. XL, r. 13 [= S. 524 = *Or. XLI, r. 14*].

For Form of Notice to Respondent of day fixed for hearing of appeal, see Appendix H, Form No. 6.

**Case Law.**

See Or. XL, r. 20.—10 T. L. J., *271*.

Or. XL, r. 14 [=S. 525=*Or. XLI, r. 15*].

Or. XL, r. 15 [=S. 526=*Or. XLI, r. 16*].

**Case Law.**

The Zillah Judges should, at the hearing of appeals, take down notes of objections

17. Where on the day fixed, or on any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed, the sum required to defray the cost of serving the notice, the Court may make an order that the appeal be dismissed :

Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs.

Provided that no such order shall be made although the notice has not been served upon the respondent, if on any such day the respondent appears when the appeal is called on for hearing.

---

and points urged by the respondent in answer to the case of the appellant and place them on the record. Care should be taken to make them as legible as possible.— **3 T. L. R. App.,** ***53.***

**Or. XL, r. 16** [ = S. 527 = *Or. XLI, r. 17*].

Section 527 of Regulation II of 1065 was as follows :—

"527. ***Dismissal of appeal for appellant's default.***—If, on the day so fixed, or any other day to which the hearing may be adjourned, the appellant does not attend in person or by his pleader, the appeal shall be dismissed for default.

***Hearing appeal*** ex parte.—If the appellant attends and the respondent does not attend, the appeal shall be heard ***ex parte*** in his absence."

**Case Law.**

1. No appeal lies from an order of the Appellate Court declining to re-hear an appeal decided ***ex parte.***— **7 T. L. R. App.,** ***56.***

2. When a Vakil states that he could not go on with the case because he is not instructed, it amounts to the fact that the Vakil has retired. The dismissal of the appeal must be treated as one falling under Section 527, C. P. C. The application for re-instatement fell under Section 529, C. P. C. [ = Or. XL, r. 18 ], and an appeal lies against orders of refusal to re-admit under Section 529. On the merits, however, the appeal was not maintainable, as the applicant (1st defendant) had ample time to instruct his Vakil and had been guilty of gross negligence. If he was sick, he could have sent written instructions to the Vakil.— **1 S. D.,** ***352.***

3. Where a Vakil appears in Court and argues his client's case in part, his refusal to go on with his argument because he did not think it worthwhile to do so, would not constitute non-appearance. Dismissal of the case under such circumstances would not be dismissal for default.— **14 T. L. J.,** ***410.***

4. See also—

Sec. 2 (2).— **25 T. L. R.,** ***83.***
Or. IX, r. 3.— **13 T. L. J.,** ***101.***
Or. XL, r. 20.— **2 T. L. R.,** ***29.***

**Or. XL, r. 17** [ = S. 528 = *Or. XLI, r. 18* ]

Section 528 of Regulation II of 1065 was as follows :—

"528. ***Dismissal of appeal where notice not served in consequence of appellant's failure to deposit cost.***—If, on the day so fixed, or any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed by

Re-admission of appeal dismissed for default.

18. Where an appeal is dismissed under Rule 16 or Rule 17, the appellant may apply to the Appellate Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

Power to adjourn hearing and direct persons appearing interested to be made respondents.

19. Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.

---

the Court, the sum required to defray the cost of issuing the notice, the Court may order that the appeal be dismissed:

Provided that no such order shall be passed, although the notice has not been served upon the respondent, if on the day fixed for hearing the appeal the respondent appears in person or by a pleader, or by a duly authorized agent."

**Case Law.**

Though the second respondent's summons was returned unserved and notice was given to the appellant's Vakil, no steps had been taken. The appeal as against the respondent must fail.

Where the liability of the defendants is joint and several, the death of one of the defendants without his representatives being brought on record could not exonerate the other defendants from liability.— **13 T. L. J.,** *48.*

**Or. XL, r. 18** [S. 529 = *Or. XLI, r. 19*]

In Section 529 of the old Regulation, the wording is:—

"*If* an appeal is dismissed..........sufficient cause from *attending* when the appeal...... the Court may re-admit the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him."

**Case Law.**

See Or. XL, r. 16.—**1 S. D.,** *352.*

" r. 20.—**2 T. L. R.,** *29.*

**Or. XL, r. 19** [= S. 530 = *Or. XLI, r. 20*]

For Form of Notice to Party to suit not made party to the appeal but joined by Court as respondent, see Appendix H, Form No. 7.

**Case Law.**

1. Section 530 does not empower Appellate Courts to make one who was no party to the original suit, a respondent in appeal.

The reason is that, if a new party be admitted in appeal, the case will have to be heard again with reference to his pleas—a procedure most inconvenient to the parties already on the record.— **11 T. L. R.,** *92.*

2. The discretionary power of directing a person to be made a respondent conferred on an Appellate Court by Order XL, Rule 19,

Re-hearing on application of respondent against whom *ex parte* decree made.

**20.** Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the Appellate Court to re-hear the appeal; and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

Upon hearing, respondent may object to decree as if he had preferred separate appeal.

**21.** (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

---

is limited only in two respects, namely, the party added must have been a party to the suit and he must be a person interested in the appeal. The power is vested in the Court, and no question of limitation can arise, and it is immaterial whether the Court acts *suo moto* or upon the application of a party.

To constitute a waiver of the right to attack the sale on the ground of a defective proclamation, two conditions have to be satisfied. The offer to submit to a sale without a fresh proclamation should have been made with knowledge of the defects in the proclamation and the offer made must have been accepted *in toto*.—

**19 T. L. J.**, *292*.

**3.** See also—

Sec. 78.—**1 T. L. J.**, *203*.

**Or. XL, r. 20** [=S. 531=*Or. XLI, r. 21*]

Section 531 of Regulation II of 1065 was as follows :—

"531. When an appeal is heard *ex parte in the absence of the respondent* and judgment is *given* against *him*, he may apply... ...sufficient cause from *attending* when the appeal........., the Court *may* re-hear the appeal.........impose upon him."

**Case Law.**

**1.** A special appeal lies from a decision passed *ex parte* against a respondent in regular appeal.— **2 T. L. R.**, *29*.

[See Section 79].

**2.** No appeal lies from an order of the Appellate Court declining to re-hear an appeal decided *ex parte*.—

**7 T. L. R. App.**, *56*.

**3.** The appeal was heard *ex parte* and allowed on 7-1-1093. The notice of appeal had been returned with the endorsement that, as the respondent refused to receive it, the notice had been affixed to a house. On 32-10-1093 the respondent applied under Section 531 C. P. C., to rehear the appeal. On the plea of limitation being raised:

*Held.*—There had not been proper service nor has the Court even declared that there had been sufficient service. Hence Article 144 of the limitation Regulation did not apply and the application to re-hear the appeal was not barred.— **10 T. L. J.**, *221*.

Form of objection and provisions applicable thereto.

(2) Such cross-objection shall be in the form of a memorandum, and the provisions of Rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(3) Unless the respondent files with the objection a written acknowledgment from the party who may be affected by such objection or his pleader of having received a copy thereof, the Appellate Court shall cause a copy to be served, as soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondent.

(4) Where, in any case in which any respondent has under this Rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to pauper appeals shall, so far as they can be made applicable, apply to an objection under this Rule.

---

**Or. XL, r. 21** [ = S. 532 = *Or. XLI, r. 22* ]

**I. 1.** Section 532 of Regulation II of 1065 ran as follows :—

"532. *Upon hearing, respondent may object to decree as if he had preferred separate appeal.*—Any respondent, though he may not have appealed against any part of the decree, may upon the hearing not only support the decree on any of the grounds decided against him in the Court below, but take any objection to the decree which he could have taken by way of appeal, provided he has filed a notice of such objection not less than seven days before the day fixed for the hearing of the appeal.

*Form of notice, and provisions applicable thereto.*—Such objection shall be in the form of a memorandum, and the provisions of Section 513, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

*Explanation.*—When the appellant fails to appear at the hearing, or appearing, withdraws the appeal, the respondent shall not be heard in support of his objections to the decree which he could have taken by way of appeal, but did not."

**2.** The Explanation found in this Section is not found in the corresponding Section 561 of the Indian Code of 1882. In the Statement of Objects and Reasons for the 1065 Bill, it was observed :—"The Explanation added to Section 561 removes the doubt to which the wording of the Section gives rise. The party who does not appeal against the decree virtually acquiesces in it. When his rights under such decree are disputed, it is equitable that he should be allowed to show that what he got is really less than what should have been awarded. But when the appellant acquiesces in the decree by allowing the appeal to go by default, the respondent could have no reasonable grounds to complain, if his objections, not urged in the form of a regular appeal, be not heard."— *S. O & R., Para 70.*

**II. 1.** In regard to the changes made, the Notes on Clauses say :—"The provision

as regards objection memorandum makes a departure from the existing provision in three matters.

(1) The objection must, at present, be filed within seven days previous to the date fixed for hearing the appeal. This operates as a hardship, and becomes difficult of application when summonses are irregularly served. Hence the proposal to enable the objection to be filed within one month from the date of service.

(2) Objections cannot be heard now if the appeal is withdrawn. This is an unreasonable penalty imposed on the respondent for not having figured as an appellant in a separate appeal of his. Having levied the required Court-fee, it would not be fair to deprive him of the right of being heard, merely because his opponent chose to withdraw the appeal.

(3) Objection memo cannot, as the law now stands, be admitted *in forma pauperis*; there being no radical distinction between an appeal and an objection, the latter is also permitted to be filed in *forma pauperis*."

**2.** It may be noted that the British Indian Rule which is reproduced here, is almost the same as Section 561 of the Indian Code of 1882, with the addition of Sub-Rule 4.

III. For Form of memorandum of Cross objection, see Appendix H, Form No. 8.

### Case Law.

**1.** A respondent shall not, without the leave of the Court for special cause, be heard in support of any other objection to the decree or order in question than those raised by him in the memorandum filed by him.— **1 T. L. R.,** *48.*

**2.** A respondent in appeal is entitled to have his objections heard and disposed of whether the appeal itself is allowed or not. When the Legislature has conferred on a respondent the right of urging objections at the time of the hearing of the appeal, it clearly intended that they should be heard and disposed of whether or not the appeal is allowed.— **3 T. L. R.,** *43.*

**3.** A respondent, in special appeal, is entitled simply to raise objections to the decree or judgment of the lower Appellate Court but not to that portion of the decree of the Court of first instance which has become final by operation of law in consequence of the neglect of defendant to appeal to the Zillah Court.

The right of a respondent to raise objections at the hearing of the appeal to any portion of the decree under appeal is co-extensive with his right to prefer an appeal from the decree itself.— **5 T. L. R.,** *120.*

**4.** Plaintiffs sued as trustees for a declaration of their right to execute a decree obtained on behalf of the trust fund and also for moneys alleged to have been wrongfully realized by defendants in execution, on the pretence that they were the trustees. Defendants contended that they were the legally appointed trustees and, as such, entitled to recover the moneys, and that institution fee on the value of the whole of the trust property should be levied.

The Munsiff, while dismissing the plaintiff's claim for moneys received by defendants whom he held to be co-trustees of plaintiff, granted by the decree a declaration of plaintiffs' right as trustees to administer the affairs of the trust. Both parties appealed to the Zillah Court, plaintiffs' memo of appeal being however marked at the heading as presented under Section 332 of the Civil Procedure Code, though treated in all other respects as a regular appeal memorandum. These appeals were separately registered by the Zillah Court, and were eventually dismissed. Defendants, thereupon, appealed specially on the ground that the declaration of plaintiffs' trusteeship by the lower Courts was beyond

the scope of the suit and the Munsiff's jurisdiction, and plaintiffs sought, at the hearing of the special appeal, to object to the disallowance by the lower Court of his claim for moneys.

*Held.*—(1) The memo, presented by plaintiffs to the Zillah Court, was virtually an appeal against the Munsiff's decree and the dismissal of such appeal, not having been specially appealed against, the plaintiffs were not entitled, at the hearing of defendants' special appeal, to object to the decree of the Zillah Court disallowing their claim.

(2) The determination of plaintiffs' general rights as trustees, though incidental to the relief asked for in the plaint, is not in the relief prayed for and could not be granted in the suit—the value of the subject-matter being beyond the jurisdiction of the Munsiff.— **8 T. L. R.,** ***95.***

**5.** Section 332 of the old Civil Procedure Code (Regulation II of 1037), did not prescribe the mode in which objections were to be taken to the lower Courts' judgments. Where the final judgment shows that a certain objection was taken, though not in writing, and allowed by the final Appellate Court, the decision with respect to the objection cannot be impugned in a subsequent suit, as based on an objection improperly taken and wrongly allowed (F. B).— **11 T. L. R.,** ***112.***

[Section 332 referred to was as follows:—"Upon the hearing of the appeal, the respondent may take any objections to the decisions of the lower Court which he might have taken if he had preferred a separate appeal from such decision."]

**6.** The objections of the defendants to the unappealed portion of the decree, not having been filed within the prescribed time, were not considered.—**11 T. L. R.,** ***153.***

**7.** Where a respondent filed a memo of objections regarding questions arising between him and his co-respondents:

*Held.*—Section 582 of the Civil Procedure Code is inapplicable to questions arising between co-respondents.— **13 T. L. R.,** ***210.***

Ref.—34 T. L. R., 222
(= 9 T. L. J., 217).

**8.** The question having been referred to a Full Bench whether the words "The day fixed for the hearing of the appeal" in Section 582 of the Civil Procedure Code, means the date specified in the notice, or the date of hearing of the appeal :—

*Held.*—The day referred to is the date fixed in the notice, and not the date of hearing.— **13 T. L. R. App.,** ***35.***

**9.** The limitation prescribed in Section 582 of the Civil Procedure Code does not apply to a case in which the notice of an appeal is not served within such date as would give to the respondent the prescribed time for filing his objections.— **14 T. L. R.,** ***27.***

Diss.—32 T. L. R., 165
(=6 T. L. J., 420).
Appl.—8 T. L. J., 462.
Fol.—36 T. L. R., 249
(= 10 T. L. J., 296).
39 T. L. R., 151
(=14 T. L. J., 296).

**10.** Where a respondent (plaintiff) filed objections to the order of the lower Court setting aside an *ex parte* decree:

*Held.*—As no appeal lies against an order setting aside an *ex parte* decree, no objections can be allowed to be taken to such order under Section 582 in the Appellate Court by the respondent (plaintiff); and an error in making such an order cannot be made a ground for reversal of the decree passed on the merits.— **14 T. L. R.,** ***29.***

Ref.—31 T. L. R., 233
(= 5 T. L. J., 461).

**11.** The rule that requires parties to file objections to findings within a prescribed time before the date of the hearing of the

appeal is one of procedure and does not affect the power of the Appellate Court to deal with the findings as it deems proper in the interests of justice.—**14 T. L. R., *31*.**

**12.** As a general rule a cross-appeal cannot re-open any questions which have been decided between co-respondents, but must have reference to the appellant and to the points which are in dispute between the respondent who takes the cross-appeal and the appellant.— **25 T. L. R., *164*.**

Ref.—34 T. L. R., 222
(= 9 T. L. J., 217).
6 T. L. J., 172.

**13.** The non-filing by the plaintiffs of any objection-memo against the finding of the lower Court on the several items of account does not disentitle the plaintiff to support the lower Court's decree, which was in their favour by showing that the disallowed items are properly allowable. The Court cannot, in such a suit for adjustment of partnership accounts, do complete justice between the parties without adjudicating upon all the items of account in dispute between the parties.— **1 S. D., *64*.**

**14.** Section 532 of the Civil Procedure Code requires an objection to be filed only if it is taken to any part of the lower Court's decree. The same Section clearly allows a respondent to support the decree on any of the grounds decided against him in the lower Court without filing an objection in respect of the same. The law does not require a respondent to file objections to findings but only to any part of the decree which may be against him (F. B.).—
**2 S. D., *197*.**

Overruled.—15 T. L. J., 190.

**15.** The plaintiff could have preferred cross-objections (under Section 532) to the 12th defendant's appeal in respect of the Munsiff's decree refusing to give him credit for the amount of the abatement which the defendant admitted to have received. He neither did this nor preferred an appeal, and in respect of that amount, the decree had become final.— **3 S. D., *17*.**

**16.** Defendants 1 and 2 owed plaintiff Rs. 600 under account. Out of this amount, third defendant, a debtor of defendants 1 and 2, undertook to pay Rs. 300 and executed a pro-note in plaintiff's favour. Rs. 300 was paid to plaintiff by a certain person named K, which payment was claimed by defendants 1 and 2 to have been made on their behalf, while the third defendant, on the other hand, claimed it to have been made on his behalf. Plaintiff was willing to credit the amount in favour of whichever party the Court found to have really made the payment and claimed Rs. 300 in the alternative against the contesting parties. The Munsiff found that Rs. 300 was actually paid on behalf of defendants 1 and 2, and gave plaintiff a decree against the 3rd defendant for the amount under the note with interest, and for the balance against 1 and 2 defendants. Third defendant appealed to the District Court making plaintiff and defendants 1 and 2 party respondents. The District Court allowed 3rd defendant's appeal holding that the payment of Rs. 300 was really made on behalf of the 3rd defendant and gave plaintiff a decree against defendants 1 and 2 for this amount. One and two defendants preferred a second appeal to the High Court. The High Court, on the evidence, found that the Rs. 300 paid to the plaintiff was really paid by defendants 1 and 2. On the question whether, while dismissing plaintiff's claim as against 1 and 2 defendants in regard to the Rs. 300, a decree can be given against the 3rd defendant for the same amount in the absence of an appeal or objection-memo by plaintiff,

***Held.***—Even in the absence of a memorandum of objection filed by a respondent under Section 532, an Appellate Court could grant to such respondent a relief by modifying the decree of the lower Court, where the granting of such relief is necessarily incidental to the relief granted to, or where such relief forms as it were a parcel of, the relief necessary to be granted to the appellant.

Having regard to the relief prayed for in the suit, *viz.*, a decree for the disputed amount, either as against defendants 1 and 2 or as against third defendant, there was nothing for the plaintiff to appeal against when the Munsiff gave him a decree as against the 3rd defendant, and Section 532 could have no application to such cases.

Inasmuch as the finding of the District Judge in the 3rd defendant's appeal, *viz.*, that the 3rd defendant should be given credit for the disputed amount implied that the said sum did not belong to defendants 1 and 2, and that they should not get credit for it, the District Judge acted rightly even in the absence of a memorandum of objections on plaintiff's part, in varying the decree of the Munsiff and giving the plaintiff a decree for the amount as against defendants 1 and 2, as the latter relief was necessarily incidental to, or was a natural or necessary consequence of, the relief granted by the District Judge to the 3rd defendant-appellant before him. The provisions of Section 546 of the C. P. C., empowered the District Judge to do so; and for the same reason, the High Court was competent, even in the absence of an objection memo on plaintiff's part, to pass a decree against the 3rd defendant for the disputed amount on the basis of its finding that the said amount belonged to defendants 1 and 2.

" Section 532 of the Civil Procedure Code contemplates the case of a party who has been denied a portion of the relief prayed for by him in the original Court, and who has been made a respondent in the appeal preferred by the party who has been prejudiced by that portion of the relief which has been actually granted to that respondent by the original Court. The language of the Section also assumes that the respondent mentioned therein could have appealed if he had chosen to do so; in other words, had himself a right of appeal against the decree. In such cases, Section 532 invests the said respondent with two rights—(*a*) a right to support the decree on any of the grounds decided against him in the Court below, (*b*) to take any objection to the decree which he could have taken by way of appeal." (F. B.).— **6 T. L. J.,** *172.*

Appl.—8 T. L. J., 425.

**17.** In the absence of cross-objections, the Appellate Court cannot disturb such portion of the decree of the lower Appellate Court as may be favourable to the appellant, and his right, whatever it may amount to under that decree, will be left undisturbed. **34 T. L. R.,** *262.*

**18.** The suit was for recovery of three items of property together with mesne profits from defendants 1 to 13. The decree in the suit allowed plaintiffs to recover items 1 and 2 from the 13th defendant and item 3 from the 12th defendant with mesne profits and costs and directed plaintiffs to pay 5th defendant's costs. From this, defendants 11 and 13 and 12th defendant preferred appeals in which plaintiffs and 5th defendant were among the respondents and plaintiffs filed a memo of objections. The appeal of defendants 11 and 13 whose interests were identical related to the order for costs and mesne profits, that of 12th defendant to property item No. 3 and the memo of objections to mesne profits and costs of 5th defendant. On these, the District Judge modified the decree of the District Munsiff by allowing the appeals of defendants 12 and 13 and allowing plaintiffs to recover items 1 and 2 with past and future mesne profits from defendants 1 to 10 with costs from them as well as 13th defendant and by directing 5th defendant to suffer his costs. In special appeal, it was urged for fifth defendant that the District Judge erred in allowing plaintiff's objections which were directed not against the defendants who appealed but against 5th defendant who was merely a co-respondent.

*Held.*—The matters urged by the plaintiffs by way of objections directed against the 5th defendant and other co-respondents had an intimate bearing on the case and the lower Appellate Court was justified in admitting the memo of objections.

[illegible stamp]



*Per Raman Tampi, J.*—As a general rule the right of a respondent to urge cross objections should be limited to his urging them against the appellants; and it is only by way of exception to the general rule that one respondent may urge cross-objections as against the other respondents, the exception holding good among other cases in those in which the appeal of some of the parties opens out questions which cannot be disposed of completely without matters being allowed to be opened up as between co-respondents.

*Per Raman Menon, C. J.*—Section 532 (Civil Procedure Code) is merely a rule of procedure and not one of jurisdiction. It lays down an exception to the general rule that objection to an appealable decree should be taken in the form of a substantive appeal [Section 518 (= Or. XL, r. 1)]. A contravention of the rule will only amount to an irregularity which will, in certain circumstances, be cured by Section 547, Civil Procedure Code [new Section 78].—

**34 T. L. R.,** ***222***
**(= 9 T. L. J.,** ***217*****).**

**19.** Where the notice of appeal was not served on the respondent in time so as to enable him to file his memorandum of objections within the period provided in Section 532 of the Civil Procedure Code;

*Held*,—Section 532 does not apply. That Section contemplates service of notice of appeal sufficiently early, so that the respondent may with due diligence be in a position to file his objections not less than seven days before the date fixed for hearing.

**36 T. L. R.,** ***249***
**( = 10 T. L. J.,** ***296*****).**

Ref.—39 T. L. R., 151
( = 14 T. L. J., 296).

[Note the change in the Rule].

**20.** The appeal was preferred by the first defendant against a decree for partition obtained by the plaintiffs-respondents who had filed the suit *in forma pauperis*. The plaintiffs-respondents applied that the memorandum of objections filed by them may be allowed to be filed *in forma pauperis*.

*Held*.—The application could not be allowed. Firstly, there was no provision in the Civil Procedure Code (old) covering such an application. Secondly, the plaintiffs had ceased to be paupers as understood in the Civil Procedure Code (F. B.).—

**11 T. L. J.,** ***1*****.**

[Note the new provision in the Rule].

**21.** In cases in which the notice of appeal is not served within such time as would give to the respondent the prescribed period for filing objections, the limitation prescribed in Section 532 of the Civil Procedure Code does not apply and the Court has power to extend the time (F. B.).—

**39 T. L. R.,** ***151***
**(=14 T. L. J.,** ***296*****).**

**22.** Rule 301 of the Civil Courts' Guide which requires that, whenever a respondent proposes to support the decree appealed against by taking objection to the findings of the lower Court against him, he shall give notice of his intention to do so not later than fifteen clear days after the service of notice of hearing of the appeal by filing in Court a memorandum of the grounds on which the decree is sought to be supported, is not inconsistent with Section 532 of the Civil Procedure Code and has the force of law.

The first part of the first paragraph of Section 532 simply says that a respondent may upon the hearing support the decree of the lower Court in his favour on any of the grounds decided against him by the lower Court. It leaves the matter there and is silent as to what the respondent should do or may be required to do in order to enable him to exercise that right. It is here that the Rule lays down the procedure. There is nothing in such a direction by the Court not consistent with the Code. It is not clear how inconsistency by implication can be imputed to a rule regulating a matter of procedure in respect of which

22. Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

Remand of case by Appellate Court.

---

the Legislature has not thought fit to make specific provision in the Code itself. It is this omission that is sought to be supplied by the Rule and it is clear that the Rule in question is not only not inconsistent with the first part of the first paragraph of Section 532, but is one made for the purpose of seeing that the right conferred on a respondent by it is exercised by him in such a manner as may not take his opponent by surprise and put him at a disadvantage (F. B.).— **15 T. L. J.,** *190.*

Ref.—18 T. L. J., 100.

**23.** When an appeal has been dismissed as being presented out of time, the hearing and determination of the objection memorandum is not permissible. Under Paragraph (4) of Rule 21 of Order XL, the only two classes of cases in which an objection memorandum could be heard and determined when the appeal itself is not heard are when the appeal is withdrawn or dismissed for default.— **17 T. L. J.,** *780.*

**24.** The right to press the memorandum of objections remains when the appeal is rejected for failure to deposit costs. Clause (4) of the Rule reserves that right when the original appeal is withdrawn or is dismissed for default. Unless the rejection of the appeal under Order XL, Rule 10, is treated as a dismissal for default, the respondent will have no right to press his memorandum of objections.— **18 T. L. J.,** *1016.*

**25.** The objection memorandum filed by the respondent has to be treated under Order XL, Rule 21, as the memorandum in a cross-appeal for purposes of return thereof for presentation to the proper Court under Order VII, Rule 10, Clause (1), read with Section 85, Clause (2), of the Civil Procedure Code.

In these matters, the provisions of the Code will have to be liberally construed, for it will be clearly improper to require a respondent to file a fresh memorandum of objections and insist upon payment of the necessary court fee payable thereon again when the same had been paid in another Court which by reason of want of jurisdiction cannot have dealt with the same.— **45 T. L. R.,** *252* (= **19 T. L. J.,** *952*).

**26.** See also—

Or. XL, r. 4.—**12 T. L. J.,** *60.*

---

**Or. XL, r. 22** [= S. 533 = *Or. XLI, r. 23*]

I. This Rule which corresponds to Section 533 of Regulation II of 1065 reproduces Rule 23 of the British Indian Code which

corresponds to Section 562 of the Indian Code of 1882.

II. Section 533 of the old Regulation was as follows :—

"533. *Remand of case by Appellate Court.*—If the Court against whose decree the appeal is made has disposed of the suit upon a preliminary point or in such manner as to exclude any evidence of fact which appears to the Appellate Court essential to the determination of the rights of the parties, and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, together with a copy of the order in appeal, to the Court against whose decree the appeal is made, with directions to readmit the suit under its original number in the register and proceed to investigate the suit on the merits.

The Appellate Court may, if it thinks fit, direct what issue or issues shall be tried in any case so remanded."

III. Section 562 of the Indian Code of 1882 did not contain the words—"or in such manner as to exclude any evidence of fact which appears to the Appellate Court essential to the determination of the rights of the parties"—found in Section 533 of the old Regulation quoted above. These words were put in by the Select Committee who reported on that Regulation. They said :—

"The corresponding Section 562 in the British Code as amended by Act VII of 1888 has reference only to decisions upon preliminary points. Cases may arise, where the decrees appealed against may have resulted from exclusion of essential points of evidence and in such cases it is expedient that the Appellate Court should have power to order their remand for the defect being remedied."

IV. 1. After Section 533, there were the following two Sections in Regulation II of 1065, taken from the Indian Code of 1882 :—

"534. *When further evidence is barred.*—When a case is so remanded with directions to take any evidence so excluded, the Court to which the case is remanded shall not take any other evidence in the case, except evidence tendered to contradict the evidence so taken.

"535. *Limit to remand.*—The Appellate Court shall not remand a case for a second decision, except as provided in Section 533."

2. The provision in the old Indian Code corresponding to Section 534 was repealed by a later Act, VII of 1888, and accordingly it found no place in the original Bill which became Regulation II of 1065. But the Select Committee on that Bill inserted it (as Section 534) because they considered that the amendment made by them in Section 533 (see above) necessitated its retention.

3. In regard to the omission of Section 535, which reproduced the provision in the British Indian Code of 1882, it may be noted that the present Indian Code does not contain it. The Select Committee of 1908 struck out this Rule as in their opinion it was unduly restrictive.—

*India Gazette*
*dated 15-2-1908, Pt. V.*

V. In regard to Rule 23 of the present Indian Code, the Indian Special Committee said :—

"After due consideration the Committee have thought it safer not to give legislative sanction to the views enunciated in Habib Bakhsh V. Baldeo Prasad (I. L. R., 23 All., 167). The power of reversal and remand is liable to be abused, while the procedure under Section 566 is free from this liability, and at the same time furnishes an effectual remedy.

"The words at the end of the Rule have been added to clear up a doubt which is stated by the Select Committee to exist as to whether evidence recorded at the original trial can be used on the trial after remand."

[For the Rule corresponding to Section 566 of the Indian Code referred to in the above extract, see Rule 24 *Infra.*]

VI. The observations of the Indian Select Committee referred to above were:—

"It has been reported to us that the practice in various Provinces differs on the question whether evidence recorded in the proceedings leading up to the decree set aside under Section 562 is in itself available as evidence during the retrial or whether it can only be made admissible, in the case of witnesses attending at the hearing, by examining them upon their previous depositions as statements recorded in a different proceeding. We are of opinion that, subject to all just exceptions, such depositions should, of their own force, be available as evidence."—

*India Gazette dated 21-3-1903, Pt. V.*

### Case Law.

**1.** Where a case has been fully investigated, but the Court of first instance has failed to record its opinion thereon, the Appellate Court ought to proceed to determine the case upon the evidence, if, in its opinion, there is sufficient material on the record for that purpose, and has no power to remand the case.

In the case, there was the greater reason for the Appellate Court's doing so, as the evidence was recorded by the disposing Court itself.— **1 T. L. R.,** ***108.***

**2.** Except in *ex parte* cases, the parties must know of the remand in the Court making the remand and, consequently, no special notice need be served. A proper notice affixed in the Court to which the remand is made would be sufficient.— **4 T. L. R. App.,** ***23.***

**3.** An Appellate Court is fully competent to make any order as to costs it may think fit, notwithstanding that no regular appeal or objection had been filed against the lower Court's order as to costs.

It is but right and fair that the party whose conduct has necessitated the setting aside of the whole proceedings up to a certain stage of the litigation and the commencing of proceedings afresh from the institution of the suit should be made to pay the costs incurred by the opposite party up to that date (F. B.).— **6 T. L. R.,** ***13.***

**4.** (1) Section 335 of the old Civil Procedure Code (Regulation II of 1037) authorises Appellate Courts to make a remand for trial only, where the lower Court's decision is on a purely preliminary point that decision is set aside on appeal, and the records of the case do not contain sufficient materials or evidence to determine the other points arising from the pleadings of the parties.

(2) When the Appellate Court finds an issue, not raised and considered by the Court of first instance, necessary to be found for the final and complete disposal of the suit, and no evidence on the record of the case to determine that fresh issue, it can only send down that issue for trial and finding to the first Court, and not get rid of the case altogether from its file.— **7 T. L. R.,** ***123.***

**5.** A, alleging himself to be the Karanavan of his Tarwad, sued B to invalidate an Otti executed by his Karanavan (deceased). B, *inter alia*, denied A's Karanavanship. The Munsiff found A's Karanavanship disproved and dismissed the suit. The Zillah Judge affirmed the Munsiff's finding but reversed the decree and remanded the suit with directions to make the real Karanavan of the Tarwad party and proceed with the case *de novo.*

*Held.*—In no case where the judgment of the first Court, on the merits, is affirmed in appeal, is such remand authorized by Section 335 of the old Civil Procedure Code (Regulation II of 1037).— **8 T. L. R.,** ***46.***

**6.** The decree passed, on remand, which is the final decree, is the only legally operative decree, and the decree that had been

passed prior to the remand ceased to be of any legal efficacy.— **9 T. L. R.,** *75.*

**7.** (1) A remand order under Section 533 of the Code, can be made only in cases where the Court of first instance disposed of the suit on a preliminary point or in such a manner as to exclude any evidence of fact essential to the determination of the rights of the parties; but where a party failed to adduce evidence and the original Court disposed of the suit on the available record, and the Appellate Court thinks that the defaulting party might be allowed a further opportunity to adduce evidence, the remand must be made under Section 540 [ = Or. XL, r. 27 ].

(2) In an appeal against the order of an Appellate Court remanding a case, the High Court may enter into the merits and dispose of any preliminary point adjudicated upon by the Court of first instance. **10 T. L. R. App.,** *3.*

Ref.—32 T. L. R., 80.

**8.** The question having been referred to a Full Bench whether a party who did not appeal against a remand order of the Appellate Court passed overruling a preliminary objection, may be allowed, in special appeal against the final decree on merits of the Appellate Court, to raise the same preliminary objection :

*Held.*—The remand order in the case, being an interlocutory decree, the special appellant's omission to appeal against it, would not deprive him of the right to impeach it in the special appeal against the appellate decree on merits and to urge the preliminary objection overruled by the interlocutory decree.— **11 T. L. R.,** *8.*

Ref.—18 T. L. J., 952.

[See also Section 83.]

**9.** Where a Court of first appeal remanded a case to the original Court for the addition of party and fresh trial :

*Held* (on appeal from the order of remand).—By force of Section 551 of the Civil Procedure Code [ new Section 85 (2)], an Appellate Court has the power of adding any party it may think necessary. The proper course in the case for the lower Appellate Court was to have added the party itself, and then to have framed the necessary issues and remitted the case to the original Court for findings on those issues.— **11 T. L. R.,** *180.*

Fol.—20 T. L. R., 208.

**10.** Where a respondent (plaintiff) filed objections to the order of the lower Court setting aside an *ex parte* decree :

*Held.*—As no appeal lies against an order setting aside an *ex parte* decree, no objections can be allowed to be taken to such order under Section 582 of the C. P. C., [=Or. XL, r. 21 ] in the Appellate Court by the respondent (plaintiff). Section 560 [new Section 83 (l) ] permits an appellant to set forth "as a ground in the appeal memo" any non-appealable order which may have affected the decision of the case. But it confers no such power on a respondent. An error in making such an order cannot be made a ground for reversal of the decree passed on the merits. It is the policy of the law to discourage purely technical objections to a decision given on the merits by a Court of competent jurisdiction. Section 547 [new Section 78] distinctly enjoins that no error, defect or irregularity in any order passed not affecting the merits or the jurisdiction of the Court shall be a ground for reversal of the decree appealed against. **14 T. L. R.,** *39.*

Ref.—31 T. L. R., 233
(=5 T. L. J., 461).

**11.** Section 533 of the Civil Procedure Code applies only where the original Court decided a case on a preliminary point and that decision is set aside in appeal.— **16 T. L. R. App.,** *46.*

**12.** Of the Sections authorising a remand —Sections 533 and 537 [ = Or. XL, r. 24], the latter refers only to cases where specific issues have to be recorded by the Appellate Court and that Court has to pass the

decision on findings submitted by the original Court. That Section is evidently not intended to cover cases which have to be wholly retried by the original Court, and in which the policy of the Legislature is to give the litigants the benefit of the decisions of two Courts. Such cases would seem therefore to fall within the purview of Section 533.

It is true that Section 535 [omitted] prohibits the Appellate Court from remanding a case for a second decision except as provided in Section 533. But in construing a statute every part of it must be read with every other part and effect must not be given to one part in such a manner as to defeat the rest. Section 533 must therefore be construed in such a manner as not to defeat the provisions of Sections 551 and 28 [new Section 85 (2) and Or. I, r. 10]. Hence it has to be taken that a remand necessitated by the addition of a fresh party under Sections 551 and 28 was intended to fall under Section 533 so as to be saved from the prohibition in Section 535 (F. B.).—
**20 T. L. R.**, *203.*

**13.** Section 533 is not intended to cover cases falling within the express provisions of Section 537 [Or. XL, r. 24]. The former refers only to cases which have been disposed of (1) on a preliminary point or (2) in such a manner as to exclude any evidence of fact which appears to be necessary and (3) in which the decree is reversed by the remanding Court. In any case no remand under this Section can be made unless the lower Court's decree is reversed. In the absence of the conditions specified in Section 533, Section 535 [omitted] expressly prohibits a remand under that Section.

A remand under Section 533 deprives the parties of the benefit of the appeal, as they should pay fresh institution fees if they wish to prefer an appeal from the decree after remand.— **1 S. D.**, *346.*

**14.** Section 533 C. P. C., permits the Appellate Court to remand a case for findings on facts but it is not within its province to direct the original Court to alter its decision on question of law.—
**2 S. D.**, *248.*

**15.** Where a personal decree on a hypothecation bond was obtained against the late Karanavan as representing his Tarwad, the succeeding Karanavan pleading, *inter alia*, absence of consideration for the bond in resistance to the execution of the decree, was not bound to prove the issue, the onus of proof ordinarily resting on the creditor. The fact that the question of consideration was agitated by an application under Section 238 [new Section 40] rather than in a regular suit did not make any difference as to onus of proof.

The order appealed against was set aside on the ground that the Judge below erred in casting the burden of proof on the appellant and the case remanded under Section 533.— **28 T. L. R.**, *170.*

**16.** A Munsiff dismissed a suit after framing issues and taking evidence without recording distinct findings on some of the issues. On appeal the District Judge reversed the Munsiff's decision, re-settled the points for determination which were not essentially different from, but were clearer and more distinct than, the issues framed by the Munsiff himself and remanded the suit for trial *de novo* under Section 533 of the Code of Civil Procedure; directing at the same time an amendment of the plaint.

*Held.*—(1) As the Munsiff had not disposed of the suit upon any preliminary point, nor in such a manner as to exclude any evidence of fact which was essential to the determination of the rights of the parties, the District Judge was wrong in having reversed the Munsiff's decree and remanded the suit for trial *denovo* under Section 533 of the Civil Procedure Code especially when the issues re-settled by him were not essentially different from those framed by the Munsiff and there was no contention that the parties were misled by the form of the issues framed by the Munsiff.

In the circumstances of the case the remand should have been under Section 537 [Or. XL, r. 24] of the Code for distinct findings on the issues in the case.

(2) The direction to 'amend the plaint was wrong, as plaintiff sought no new relief, and as no new points of dispute which were essentially different from the point of dispute arising from the original pleadings arose between the parties.—

**28 T. L. R.,** *332*
**( = 3 T. L. J.,** *201*).

**17.** A remand order under Section 533, speaking generally, restores the parties to the position in which they stood before the Court of first instance passed its decree. This implies that they will have the right at the new trial to adduce whatever evidence they may wish to, subject, of course, to such restrictions as may have been imposed on them either by the order of remand or by the Court of first instance in the course of the first trial. Whether this right should be qualified in any instance and if so, to what extent, are questions which must be left to the discretion of the Court which remands the suit to decide, having regard to all the circumstances of the case.— **31 T. L. R.,** *139.*

**18.** *Per Viraraghava Aiyengar, J. (Chatfield, J. concurring).*—Where on hearing an appeal, the Appellate Court is of opinion that certain additional evidence has to be taken in order to satisfactorily decide the various issues raised and tried by the Court of first instance, the Appellate Court is competent to act under Section 538, C. P. C., if the evidence wrongly excluded by the trial Court is in the opinion of the Appellate Court of such a nature, or has so vital a bearing on the questions arising in the suit, that it may be deemed to fall within the words 'exclude any evidence of fact which appears to the Appellate Court essential to the determination of the rights of the parties' occurring in Section 533. If the excluded evidence is not of the nature mentioned above, the provisions of Section 540, C. P. C., [Or. XL, r. 27] have to be adhered to by the Appellate Court. Section 537 [Or. XL, r. 24] can come into operation only when there is omission to frame issue or try any issue or 'to determine any question of fact essential to the right decision of the suit on the merits'. The words 'determine any question of fact' occurring in Section 537 are meant to cover also cases where no finding on an issue which has been tried is given by the trial Court.

*Per Cheriyan, J.*—If the Appellate Court is of opinion that certain additional evidence has to be taken in order to satisfactorily decide the various issues raised and tried by the Court of first instance, the Appellate Court must take action under Section 540, C. P. C.

It is the duty of the High Court to enter into the merits and appreciate the evidence on questions of fact when the findings of the trial Court and the lower Appellate Court are conflicting, and it will not ordinarily be possible to satisfactorily discharge that duty in the absence of findings of both the Courts based on the *whole* evidence. Such findings can be had only if the Appellate Court is at liberty to call upon the Court of first instance to record revised findings. It has often been observed that the Civil Procedure Code is not exhaustive and where a particular course of action is not prohibited by the Code, it should not be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice. It may also be pointed out that it has been a well-established practice for the Appellate Courts in this State to call for revised findings whenever additional evidence is ordered to be taken by the Court of first instance. So long as, in the interests of justice, this practice is found to be very helpful for Courts of first appeal and almost necessary for a Court of second appeal in cases of conflicting findings on questions of fact, where the Law empowers it to enter into the merits and decide questions of fact for itself,

and in view of the fact that such a course is not prohibited by the Civil Procedure Code, it will not be proper to deviate from the well-established practice in a matter of procedure.

*Per Viraraghava Aiyengar, Chatfield and Cheriyan JJ*:—If the Appellate Court direct the trial Court under Section 540, C. P. C., to receive additional evidence, it is competent to the Appellate Court to call upon the trial Court to record revised findings upon the issues already tried by it.—
**32 T. L. R.**, *80*.

Ref.—10 T. L. J., 137.

**19.** From the decree in a suit of the value of more than Rs. 1000, an appeal was preferred by the plaintiff-petitioner to the District Court which set aside the Munsiff's decree and remanded the suit under Section 583 for re-trial. The Munsiff to whom the suit was remanded declined to try and dispose of the suit as, in his opinion, the judgment of the District Court which had no jurisdiction to entertain the appeal was not a valid judgment.

*Held*.—The course adopted by the District Munsiff was illegal inasmuch as it was not competent to him in the face of the remand order to have declined to try and dispose of the suit. Even though the District Judge acted without jurisdiction in entertaining the appeal, the proper course for the defendants (counter-petitioners) to have taken, was to invoke the revisional jurisdiction of the High Court to cancel the appellate proceedings. The Munsiff clearly had no jurisdiction to revise the Judge's order and virtually to set it aside.—
**34 T. L. R.**, *293*.

**20.** Where the suit has not been disposed of by the primary Court upon a preliminary point nor in such manner as to exclude any evidence of fact essential to the determination of the rights of the parties, Section 583, C. P. C., will not apply. It is not the contention of the respondent that the Court of first instance omitted to settle or try any issue or determine any essential question of fact, and so, Section 537, C. P. C., will not apply. Where the Appellate Court finds that additional evidence is required to be taken in order to satisfactorily decide a question arising between the parties the proper procedure for the Appellate Court is to act under Section 540, C. P. C., and direct the primary Court to receive additional evidence that the parties might adduce on the question and submit revised findings to the Appellate Court.—
**10 T. L. J.**, *137*.

**21.** The provisions of the Civil Procedure Code as regards the power to order a remand are not exhaustive. Besides the cases specifically dealt with in the Code, there are cases in which the Appellate Court has inherent power to order a retrial for the ends of justice. When the lower Court has committed any error, omission or irregularity, by reason of which there has not been a proper trial or an effectual or complete adjudication of the suit, the Appellate Court has set aside, *ex debito justitiæ* the proceedings of the lower Court and directed the primary Court to retry the case.

Though an order of remand may be in contravention of the provisions of Section 583, yet the error may be cured by the consent of parties.—**38 T. L. R.**, *217*
(=**12 T. L. J.**, *160*).

Ref.—18 T. L. J., 175.

**22.** When a remand is made, it is the order of remand that confers jurisdiction on the Court to which the remand is made. The jurisdiction being created by the order of remand is defined and circumscribed by it.

Therefore, where the Court to which the remand is made has admitted evidence not covered by the order of remand and used such evidence in arriving at its findings, the findings returned are invalid in law.—
**15 T. L. J.**, *413*.

**23.** When settling the issue, the Munsiff did not draw up the issue paper as required by Rule 64 of the Civil Courts Guide. If he had elucidated the relevant facts bearing on the pleadings and prepared the issue paper in the manner pointed out in the Rule, the obscurity in the pleadings would have been removed and the Court would have been in a better position to understand the defendant's position.

Omission on the part of a trial Court to comply with the imperative provisions of the Rule laid down by the High Court in the matter of trial of suits is an irregularity. If by reason of the omission there has not been a proper trial or an effective and complete adjudication of the suit and the party complaining of the omission has been materially prejudiced thereby, the Appellate Court should not hestitate to vacate the decision of the trial Court and to order retrial.

The provisions of the Civil Procedure Code as regards the power to order remand are not exhaustive, and besides the cases specially provided for in the Code, there are cases in which the Appellate Court has inherent power to order re-trial for the ends of justice. The restrictive provision in Section 585 is omitted in the present C. P. C., and the inherent power of the Court to make such orders as may be necessary for the ends of justice are expressly provided for in Section 115. The Appellate Court is, therefore, now more free to exercise its power of remand when it considers it necessary in the ends of justice, though the case may not strictly fall under Order XL, Rule 22. The decree was therefore set aside, and the suit remanded under this Rule.—

**18 T. L. J.,** ***175.***

**24.** In the case of remand under Section 533, the decisions on questions contained in the orders directing the same will be conclusive between the parties unless vacated in appropriate proceedings, and the Court which passed the order is precluded from going behind the same when the matter comes up again by way of a fresh appeal against the decree after remand.

In the case of orders of remand under Section 537 [=Or. XL, r. 24], the questions upon which arguments had been heard before remand and definite opinions expressed by the Court at the time when such remand was ordered, should not be allowed to be re-agitated at a later stage. But if the opinions on those questions were only incidentally or provisionally made, the Court not having intended such expression of opinion as a decision of the question, the whole case must be deemed to be open for consideration at a later stage, irrespective of the expression of opinion by the Court on some of the questions involved therein at an earlier stage. Whether the order of remand has decided the question in dispute or the same only contains incidental or provisional observations, is a matter that has to be decided with reference to the facts of each case.

It is a well-recognised rule in the law of pleadings that an estoppel must always be specifically pleaded, unless it appears on the face of the adverse pleading, when it is ground for an objection in point of law. A plea of estoppel must be drafted with great care and particularity. It must state in full detail the facts on which the party pleading relies as constituting the estoppel, and should also specify the allegations which it is alleged the other party is precluded from proving. Facts that form the basis of estoppel have to be specifically pleaded. Even when it turns upon silence, the same has to be expressly alleged (F. B.).— **44 T. L. R.,** ***408***

**(= 18 T. L. J.,** ***1226*****).**

**25.** The powers of Appellate Courts under Order XL, Rule 22, are wider than those under Section 533 of the Code of 1065.

The expression "preliminary point" in Rule 22 of Order XL, means a matter preliminary to the general determination of the suit which the parties bring before the Court for decision. It is not confined to

Where evidence on record sufficient. Appellate Court may determine case finally.

23. Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.

24. Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required; and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor.

---

such legal points only as may be pleaded in bar of suit, but comprehends all such points as may have prevented the Court from disposing of the case on its merits whether such points are pure questions of law or pure questions of fact. The expression preliminary point has to be liberally construed. It would not be violent to treat the shutting out of the evidence on one side as matter which has affected the decision of a suit prejudicially and on that basis considering it to be a preliminary question falling within the purview of Order XL, Rule 22.

Even in cases which cannot be brought within the scope of Order XL, Rule 22, the better view seems to be that Appellate Courts can exercise powers of remand under their inherent powers under Section 115 in appropriate cases.— **19 T. L. J.**, *1353*.

**26.** See also—

Sec. 2 (2).— **38 T. L. R.**, *274* (= **12 T. L. J.**, *296*).

Sec. 115.— **18 T. L. J.**, *968*.
**44 T. L. R.**, *148* (= **18 T. L. J.**, *1007*).

Or. XXI, r. 87.— **18 T. L. J.**, *952*.
Or. XL, r. 24.— **44 T. L. R.**, *62* (= **18 T. L. J.**, *1081*).
Or. XL, r. 25.— **18 T. L. R.**, *23*.

**Or. XL, r. 23** [=S. 536=*Or. XLI, r. 24*]

**Case Law.**

See under previous Rule.

**Or. XL, r. 24** [=S. 537 =*Or. XLI, r. 25*]

The corresponding Section of the old Regulation was as follows:—

"537. *When Appellate Court may frame issues and refer them for trial to Court whose decree appealed against.*—If the Court against whose decree the appeal is made has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, and the evidence upon the record is not sufficient to enable the Appellate Court

25. (1) Such evidence and findings shall form part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to any finding.

*Findings and evidence to be put on record. Objections to finding.*

(2) After the expiration of the period so fixed for presenting such memorandum, the Appellate Court shall proceed to determine the appeal.

*Determination of appeal.*

---

to determine such issue or question, the Appellate Court may frame issues for trial, and may refer the same for trial to the Court against whose decree the appeal is made, and in such case, shall direct such Court to take the additional evidence required,

and such Court shall proceed to try such issues, and shall return to the Appellate Court its finding thereon together with the evidence."

### Case Law.

1. An omission to regard the qualification of an obligation created by law and to frame a definite issue in connection with it amounts to material irregularity. The issue raised in the case and tried was general in its wording and the mind neither of the parties nor of the Courts below was specifically directed to the statutory qualification.— **38 T. L. R.,** ***179*** **(=13 T. L. J.,** ***328*****).**

2. Under Section 83, Clause (2), the only remedy that a person aggrieved by an order of remand under Order XL, Rule 22, has, is by way of appeal against that order, and if he does not do so, he is, thereafter, precluded from disputing its correctness. This appeal may be preferred within sixty days under Article 141 of the Limitation Regulation. The statute has imposed no other restriction upon this right of appeal vested in a person aggrieved by the order of remand.

The right of appeal against a remand order by an Appellate Court is unaffected by the subsequent passing of a final decree by the trial Court, and the proceedings taken by the original Court after the appeal filed against the remand order are null and void.

The reversal of the order of remand will vacate the final decree passed after the remand, for that decree depends for its validity on the remand order, and with the quashing of that order the decree will cease to have any force.

Where the lower Appellate Court decides the main issues in the case and remands the case on a single question remaining to be decided, the remand has to be under Order XL, Rule 24 and not Rule 22.
**44 T. L. R.,** ***62*** **(=18 T. L. J.,** ***1081*****).**

3. See also—

Or. XL, r. 22.—**20 T. L. R.,** ***208*****.**
**1 S. D.,** ***346*****.**
**28 T. L. R.,** ***282*** **(=3 T. L. J.,** ***201*****).**
**32 T. L. R.,** ***60*****.**
**10 T. L. J.,** ***137*****.**
**15 T. L. J.,** ***412*****.**
**44 T. L. R.,** ***408*** **(=18 T. L. J.,** ***1226*****).**
" r. 25.—**14 T. L. R.,** ***31*****.**
**25 T. L. R.,** ***185*****.**

---

### Or. XL, r. 25 [=S. 588=*Or. XLI, r. 26*]

### Case Law.

1. The party who files no objection to findings has no right, except with the per-

mission of the Court, to call them in question at the hearing. But the rule that requires parties to file objections to findings within a prescribed time before the date of the hearing of the appeal is one of procedure and pleading and does not affect the power of Appellate Court to deal with the findings as it deems proper in the interests of justice.— **14 T. L. R.,** *31.*

**2.** When a first Appellate Court has remanded a case to the Court of first instance for the trial of issues, and when on the return of the findings on those issues, no objections have been preferred by either party, the Appellate Court is bound to consider the findings of the lower Court on the merits and the imperative provisions of Section 545 [=Or. XL, r. 30] of the Civil Procedure Code apply alike to cases remanded by the first Appellate Court for the trial of issues, and to those in which no such remand has taken place.

Where, therefore, a first Appellate Court remanded a suit for a finding on facts and allowed the appeal after the receipt of the Munsiff's findings, without going into the facts of the case on the simple ground that the respondents had not filed objections :

*Held.*—The judgment of the lower Appellate Court was not final as contemplated by law and therefore the case should be remanded under Section 583, C. P. C.

The non-filing of the objections does not relieve the lower Appellate Court of the necessity of recording its own findings on the merits. The High Court, as a Court of second appeal, is precluded from entering into the merits of the case in order to ascertain the weight of the evidence produced in support of the allegations of the parties, when the findings of the lower Court are concurrent; and it has to be seen to that the lower Appellate Court has recorded its findings in the manner prescribed by law. "Even if no objection was preferred in writing or orally, it is not the duty of the lower Appellate Court to accept the Munsiff's finding blindly without examining the evidence on which it was founded and satisfying itself that it was correct and proper to be accepted."— **18 T. L. R.,** *23.*

Ref.—25 T. L. R., 185.

**3.** Suit for the recovery of Tarwad properties taken possession of by defendant, a junior member. Defendant contended that the properties were allotted to him for maintenance and that plaintiff was not entitled to take possession of them till he had made other arrangements for maintenance. The lower Court decreed the suit in plaintiff's favour conditional on his making other arrangements for defendant's maintenance. Plaintiff appealed to the High Court and the High Court remanded the suit for findings on fresh issues. The Munsiff found the maintenance allotment not true but that defendant was in possession of the properties from 1064 to 1082 (date of suit). On receipt of the findings, the respondent was called upon by the High Court to file his objections, if any, within seven days. The respondent neglected to file any objections.

At the hearing, the respondent's Vakil argued that, in view of the finding of the lower Court regarding the possession by the defendant, it should be presumed that plaintiff, Karanavan of the Tarwad, impliedly agreed to treat the properties as allotted to defendant for maintenance. In answer, appellant's Vakil urged that respondent not having filed objections within the time allotted, could not be allowed to argue against the finding at the hearing and that the finding of the Court of first instance had become final.

*Held.*—The respondent, not having filed objections within the time fixed by the Appellate Court, was not entitled as a matter of right to object to the finding at the hearing but that he might do so, provided the Court gave him permission.

The Appellate Court was not bound to accept the findings of the lower Court as final for the reason that objections had not

Production of additional evidence in Appellate Court.

26. (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

---

been filed, as Section 538, C. P. C., requires the Court to 'determine the appeal.'—
**25 T. L. R.,** *185.*

---

**Or. XL, r. 26** [= S. 539 = *Or. XLI, r. 27*]

**Case Law.**

**1.** An Appellate Court is not authorised to try an appeal *de novo* and take the whole evidence. Section 339 of the old Civil Procedure Code only provides for the taking of *additional* evidence in appeal under certain circumstances, the Court in such cases invariably recording the reasons for such procedure.

The taking of such additional evidence does not make a special appeal liable to be heard and determined as if it were a regular appeal.— **1 T. L. R.,** *79.*

**2.** No appellant shall be allowed to produce fresh documents with memorandum of appeal. As a rule, he must refer to them in the memo of appeal. The proper procedure in cases of such documents is that they should be produced at the hearing of the appeal with a written application to admit them. No application for admission of fresh documents shall be heard or granted unless the applicant shows that he gave at least seven days' notice in writing to the other side, containing full particulars of the documents intended to be filed and of his intention to so apply.—
**3 T. L. R. App.,** *56.*

**3.** Section 11 [new Section 14] is only a rule of procedure and not of jurisdiction, a direction to the suitor and not an absolute rule binding on the Court.

The appellant moved the Court by two petitions for reception of additional evidence when the appeal was taken up for hearing —one to admit a new document and the other to send for some records from the Taluk cutcherry.

*Held.*—The prayers could not be granted.— **26 T. L. R.,** *200.*

Fol.—28 T. L. R., 94
(= 3 T. L. J., 57).
Ref.- 32 T. L. R., 38
(= 6 T. L. J., 101).

**4.** The legitimate occasion for the application of Section 539 of the Civil Procedure Code is that some inherent lacuna or

27. Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

Mode of taking additional evidence.

28. Where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

Points to be defined and recorded.

*Judgment in Appeal.*

29. The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders.

Judgment when and where pronounced.

30. The judgment of the Appellate Court shall be in writing and shall state—

Contents, date and signature of judgment.

(*a*) the points for determination;
(*b*) the decision thereon;
(*c*) the reasons for the decision; and,
(*d*) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

---

defect must become apparent on examining the evidence in the case as it stands.—

10 T. L. J., *243*.

5. It is settled law that the legitimate occasion for the application of Clause (*b*) of Section 539 of the Civil Procedure Code is when, on examining the evidence as it stands, some inherent lacuna or defect becomes apparent, and not where discovery is made outside the Court of fresh evidence and the application is made to import it. That is the subject of review of judgment.—

11 T. L. J., *864*.

Or. XL, r. 27 [=S. 540 = *Or. XLI, r. 28*]

Case Law.

See Or. XL, r. 22.—10 T. L. R. App., *3*.
32 T. L. R., *80*.
10 T. L. J., *137*.
" r. 26.—1 T. L. R., *79*.

Or. XL, r. 28 [ = S. 541 = *Or. XLI, r. 29*]

Or. XL, r. 29 [ =S. 543 = *Or. XLI, r. 30*]

31. The judgment may be for confirming, varying or reversing the decree from which the appeal is preferred, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be made in appeal, the Appellate Court may pass a decree or make an order accordingly.

What judgment may direct.

32. The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.

Power of Court of Appeal.

*Illustration.*

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X appeals and A and Y are respondents. The Appellate Court decides in favour of X. It has power to pass a decree against Y.

---

**Case Law.**

See under Section 30.

**Or. XL, r. 30** [=S. 545=*Or. XLI, r. 31*]

**Case Law.**

1. In appealable cases, the lower Appellate Court when it dissents from the conclusions of the Court of first instance, should show that the reasoning of the original Court, is faulty.— **9 T. L. R.,** *188.*

2. Where an Appellate Court fully adopts the reasoning and conclusions of the Court of first instance, it is not bound to set out the reasons for its decision with the same fullness as if it was deciding the suit in the first instance or as if it was reversing the first Court's decree.— **13 T. L. J.,** *131.*

3. The judgment of the lower Appellate Court did not satisfy even the minimum requirements of the law. It did not set out the points for decision, the decision thereon and the reasons for the decision as required by Section 545. It did not even show that the Judge had applied his mind to the facts of the case or to the evidence adduced by the parties. A portion of the evidence was adduced before the Judge himself; and that circumstance was not noticed by him. A judgment vitiated by these defects could not be regarded as a judgment in law. The decree of the lower Court was accordingly set aside and the appeal remanded.— **14 T. L. J.,** *410.*

4. See also—
Or. XL, r. 25.—**18 T. L. R.,** *23,*
and
Under Sec. 30.

**Or. XL, r. 31** [=S. 546=*Or. XLI, r. 32*]

**Or. XL, r. 32** [= „ = *Or. XLI, r. 33*]

I. "This Rule gives power to the Appellate Court to pass any decree that may be

deemed just notwithstanding the fact that the appeal is from part of a decree only, or that there was no objection memo filed. The Illustration is an instance not infrequently arising, and in such cases at present anomalous decrees are the result."—

*Notes on Clauses.*

II. The Indian Special Committee said: —"The Committee consider it most important that an Appellate Court should have the fullest power to do complete justice between the parties. The Illustration indicates a type of case for which provision is intended to be made."

III. The Rule in the Indian Code has the following proviso:—"Provided that the Appellate Court shall not make any order under Section 35-A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order."

For Section 35-A of the Indian Code, newly added, see under Section 82 of the Regulation, *Supra.*

IV. This Rule is taken for the most part from Order 58, Rule 4, of the English Rules.

### Case Law.

1. No decree can be passed in appeal against a defendant whom the Court of first instance absolved from liability, and against whom no appeal has been preferred within time.— **3 T. L. R.,** *46.*

2. When the case was before the lower Court for the trial of issues remitted by the High Court, the parties compromised and presented a Razinamah. The Judge passed an order affirming it and directing a decree to be drawn up accordingly.

*Held.*—As the case was pending in the High Court the Judge had no jurisdiction to pass such order. He should have sent the Razi to the High Court. The terms of the Razi being unobjectionable were decreed.— **4 T. L. R.,** *25.*

3. The Appellate Court cannot raise fresh issues with reference to pleas not urged in the Court below.—**9 T. L. J.,** *195.*

4. In an appeal against the order of an Appellate Court remanding a case, the High Court may enter into the merits and dispose of any preliminary point adjudicated upon by the Court of first instance.

It is obviously expedient and equally desirable that (on the hypothesis that the ruling is incorrect) it should be quashed at once, and thereby the lower Courts saved the time and labour, and the parties, the expense and annoyance, of a protracted investigation of a claim barred by limitation.— **10 T. L. R. App.,** *3.*

5. When a suit has been dismissed against one of two defendants by the Court of first instance and the defeated plaintiff has not appealed against that part of the decree, the addition of the defendant against whom the suit has been dismissed, to the array of parties does not empower the Appellate Court to pass against him a decree which the Court of first instance declined to pass and in the decision of which the plaintiff chose to acquiesce.— **25 T. L. R.,** *91.*

Ref.—6 T. L. J., 172.
Dist.—19 T. L. J., 1016.

6. "It is doubtless true that, on appeal, the whole case, including the facts, is within the jurisdiction of the Appeal Court. But generally speaking, it is undesirable to interfere with the findings of fact of the trial Judge who sees and hears the witnesses, and has an opportunity of noting their demeanour, especially in cases where the issue is simple and depends on the credit which attached to one or other of conflicting witnesses. Nor should his pronouncement with respect to their credibility be put aside on a mere calculation of probabilities by the Court of appeal. In making these observations, Their Lordships have no desire to restrict the discretion of the Appellate Courts in India in the consideration of evidence. They only wish

33. Where the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

Dissent to be recorded.

---

to point out that where the issue is simple and straightforward, and the only question is which set of witnesses is to be believed, the verdict of the Judge trying the case should not be lightly disregarded" (39 Bom., 386, P. C.).— **8 T. L. J.,** *472.*

Ref.—36 T. L. R., 97 (=10 T. L. J., 99).

7. The general rule is that an Appellate Court ought to be extremely chary in interfering with the finding of fact where that finding is based on the ground that the Judge who heard the evidence of the witnesses did not believe them; and probably the advantage of hearing the witnesses give their evidence is of special value when it relates to the mental capacity of a person. This rule, however, is not of universal application. The rule does not apply to cases where the Appellate Court is clearly satisfied that there has been miscarriage in the appreciation of evidence, that it is manifestly clear from the probabilities that the Court below was wrong, that there has been some miscarriage in respect of a presumption to which too much weight was given or that there is so strong a preponderence of testimony that the Appellate Court can confidently pronounce the decision to be wrong.

"The advantage the Judge of the primary Court possesses in forming a correct opinion of the credit due to the witnesses, does not relieve the Court of Appeal from the duty of examining the whole evidence and forming for itself an opinion upon the whole of the case" (10 M. I. A., 429).

"Even where the appeal turns upon a question of fact, the Court of Appeal has to bear in mind that its duty is to re-hear the case and the Court must re-consider the materials before the Judge, with such other materials as it may have decided to admit. The Court must then make up its own mind, not disregarding the judgment appealed from, but carefully weighing and considering it; and not shrinking from overruling it, if on full consideration, the Court comes to the conclusion that the judgment is wrong" (1898, 1. Ch. 704).

To justify the rejection of evidence, it must be either contradicted, or improbable in itself or obnoxious, according to some established legal mode of testing truth.— **36 T. L. R.,** *97* (**=10 T. L. J.,** *99*).

8. See also—

Sec. 76.— **13 T. L. R.,** *93.*
Or. IX, r. 13.—**14 T. L. J.,** *220.*
Or. XL, r. 4.—**12 T. L. J.,** *60.*
**38 T. L. R.,** *129* (**=12 T. L. J.,** *291*).
**18 T. L. J.,** *301.*
„ r. 21.— **6 T. L. J.,** *172.*
**34 T. L. R.,** *222* ( **=9 T. L. J.,** *217*).

---

**Or. XL, r. 33** [= „ =*Or. XLI, r. 34*].

I. "This Rule is but a legislative recognition of what is now the practice."— *Notes on Clauses.*

II. This Rule is the same as Section 576 of the Indian Code of 1882, but appears not to have been adopted in Regulation II of 1065.

---

*Decree in appeal.*

Date and contents of decree.

34. (1) The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made.

(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Judge or Judges who passed it:

Judge dissenting from judgment need not sign decree.

Provided that, where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

Copies of judgment and decree to be furnished to parties.

35. Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Appellate Court and at their expense.

Certified copy of decree to be sent to Court whose decree appealed from.

36. A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

---

**Or. XL, r. 34** [= S. 548 = *Or. XLI, r. 35*].

I. 1. Sub-Rules (1) and (4) and the Proviso are the same as Paras (1) and (4) and the Proviso, respectively, of the corresponding Section of the old Regulation.

2. Paras (2) and (3) of the Section corresponding to Sub-Rules (2) and (3) were as follow:—

"The decree shall contain the number of the appeal, and a concise statement of the object of the appeal, the names and description of the appellant and respondent, and shall specify clearly the relief granted or other determination of the appeal.

The decree shall also state the amount of costs incurred in the appeal, and by what parties and in what proportions such costs and the costs in the suit are to be paid."

II. For Form of Decree in Appeal, see Appendix H, Form No. 9.

**Or. XL, r. 35** [= S. 549 = *Or. XLI, r. 36*]

**Or. XL, r. 36** [ = S. 550 = *Or. XLI, r. 37*]

## ORDER XLI.

### Appeals from Appellate Decrees.

Procedure. The Rules of Order XL shall apply, so far as may be, to appeals from appellate decrees.

## ORDER XLII.

### Appeals from Orders.

Appeals from orders. 1. An appeal shall lie from the following orders under the provisions of Section 82, namely :—

(1) an order under Rule 10 (2) of Order I striking out or adding the name of a person as plaintiff or defendant ;

(2) an order under Rule 4 of Order II giving or refusing to give leave for adding a cause of action ;

---

**Or. XLI, r. 1** [*Cf.* S. 556=*Or. XLII, r. 1*]

I. Section 556 of Regulation II of 1065 has the following words at the end :—" to appeals under this Chapter, and to the execution of decrees passed in such appeals."

II. See Section 86, Clause (*a*), *Supra*.

**Case Law.**

See under Section 86.

**Order XLII :** " As has been already remarked, provision for questioning several interlocutory orders in appeal immediately, is now repealed, and it is only such orders that affect the jurisdiction of the Court, or affect the person or property of a litigant that are allowed to be challenged immediately by way of appeal. Orders allowing amendments of plaints or written statements adding or striking out a party, including or excluding causes of action, directing parties to appear, allowing or refusing to allow a set off, and similar orders which are passed in the course of a suit are all omitted from the purview of an immediate appeal. All orders, however, that determine the suit and that are passed as a penalty for the disobedience of the litigants to the orders of the Court are made appealable. In a matter such as allowing or taking away the right of appeal, there must be a large difference of opinion, and it will depend on the view taken as to the general policy applicable, and, to some extent on the efficiency and the integrity of judicial officers as to how many, or how few, appeals may be allowed against interlocutory orders. It is deemed that, viewed from any standpoint, the provision hereafter should be for less and not more scope for interference by an Appellate Court in matters essentially incidental.

" It must also be noted that no second appeals at all are now provided from an appellate judgment in appeals passed against orders.

" It may further be noted that an appeal is provided against orders admitting applications for review, not on certain specified grounds only, but on all available grounds."

*Notes on Clauses.*

(3) an order under Rule 10 of Order VII returning a plaint to be presented to the proper Court ;

(4) an order under Rule 10 of Order VIII pronouncing judgment against a party ;

(5) an order under Rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit ;

(6) an order under Rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed *ex parte* ;

(7) an order under Rule 4 of Order X pronouncing judgment against a party ;

(8) an order under Rule 21 of Order XI ;

(9) an order under Rule 10 of Order XVI for the attachment of property ;

(10) an order under Rule 20 of Order XVI pronouncing judgment against a party ;

(11) an order under Rule 27 of Order XXI staying execution of the decree ;

(12) an order under Rule 32 of Order XXI on an objection to the draft of a document or of an endorsement ;

(13) an order under Rule 69 or Rule 89 of Order XXI setting aside or refusing to set aside a sale ;

(14) an order under Rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit ;

(15) an order under Rule 10 of Order XXII giving or refusing to give leave ;

(16) an order under Rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction ;

(17) an order under Rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit ;

(18) an order under Rules 2, 11, 13 and 14 of Order XXXII directing a pleader, next friend or guardian for the suit to pay costs ;

(19) orders in interpleader suits under Rule 3, 4 or 6 of Order XXXIV ;

(20) an order under Rule 2, 3 or 6 of Order XXXVI ;

(21) an order under Rule 1, 2, 4 or 10 of Order XXXVII;

(22) an order under Rule 1 or 4 of Order XXXVIII;

(23) an order under Rule 18 of Order XXXIX staying or refusing to stay a suit;

(24) an order under Rule 10 of Order XL refusing to restore an appeal;

(25) an order of refusal under Rule 18 of Order XL to re-admit, or under Rule 20 of Order XL, to re-hear an appeal;

(26) an order under Rule 22 of Order XL remanding a case;

(27) an order under Rule 4 of Order XLV granting an application for review.

---

**Or. XLII, r. 1** [=S. 557 =*Or. XLIII, r. 1*]

I. The corresponding Section of Regulation II of 1065 was as follows:—

"557. *Orders appealable.*—An appeal shall lie from the following orders under this Code, and from no other orders:—

(1) orders under Section 17, staying proceedings in a suit;

(2) orders under Section 28, striking out or adding the name of any person as plaintiff or defendant;

(3) orders under Section 32 or Section 62, directing that a party shall appear in person;

(4) orders under Section 40, adding a cause of action;

(5) orders under Section 43, excluding a cause of action;

(6) orders returning plaints for amendment or to be presented to the proper Court;

(7) orders under Section 106, setting-off, or refusing to set-off, one debt against another;

(8) orders rejecting applications under Section 98 (in cases open to appeal) for an order to set aside the dismissal of a suit;

(9) orders rejecting applications under Section 103 for an order to set aside a decree *ex parte*;

(10) orders under Sections 103, 115 and 172;

(11) orders under Section 111 or Section 239, rejecting or returning for amendment, written statements or applications for execution of decrees;

(12) orders under Sections 138 and 140, directing anything to be impounded;

(13) orders under Section 157, for the attachment and sale of movable property;

(14) orders under Section 163, for attachment of property, and orders under Section 165 for the sale of attached property;

(15) orders under Section 232 relating to execution of transferred decrees, orders under Section 237 relating to stay of execution, orders under Section 249 relating to sureties, orders under Sections 254 and 255 relating to the giving of time for execution of decrees and to adjustment of decrees, and orders under Section 258 as to objection to draft conveyances or draft endorsements;

(16) orders under Section 291, orders under Section 309 or Section 310, for confirming, or setting aside, or refusing to set aside, a sale of immovable property;

(17) orders under paragraph 2 of Section 325, relating to the release of sick debtors, orders under Section 331, Clause (*g*), relating to the discharge of sick judgment-debt-

ors, orders in insolvency matters under Section 343, Section 344 and Section 345;

(18) orders under Section 350, paragraph 2, Section 351 or Section 352;

(19) orders under Section 354, dismissing a suit;

(20) orders under Section 355, refusing to set aside the abatement or dismissal of a suit;

(21) orders disallowing objections, under Section 358;

(22) orders under Section 434, Section 435 or Section 438, directing a next friend or guardian for the suit to pay costs;

(23) orders in interpleader-suits under Section 452, Clause (a), (b) or (d), Section 454 or Section 455;

(24) orders under Section 458, Section 459, Section 464, Section 471, Section 472, Section 475, Section 476, Section 481 or Section 482;

(25) orders under Section 493 superseding an arbitration;

(26) orders under Section 497, modifying an award;

(27) orders of refusal to admit an appeal presented after the prescribed period of limitation, orders of refusal under Section 529, to re-admit, or under Section 531, to rehear, an appeal;

(28) orders under Section 533 remanding a case;

(29) orders under any of the provisions of this Code, imposing fines or for the arrest or imprisonment of any person, except when such imprisonment is in execution of a decree.

The orders passed in appeals under this Section shall be final, except in cases falling under Clauses (15), (16) and (17) in which a second appeal shall lie to the High Court against the orders passed by the District Court on appeal."

II. See Section 82 *Supra.*

III. 1. In the original Bill, the provisions of the British Indian Rule were adopted. But the Select Committee recast them. They said:—"Appeals provided for from certain orders under Section 557 of the existing Regulation have been omitted in Rule 1 (of the original Bill). After carefully examining them, we consider it necessary that some of the orders have to be included. As such inclusion necessitates a great deal of change in the numbering, we propose to substitute the following for Rule 1."— *S. C. R.*

2. The corresponding Rule in the British Indian Code does not contain the following Clauses which allow appeals against the orders referred to therein:—

Clause (1) An order under Rule 10 (2) of Order I.

" (2) An order under Rule 4 of Order II.

" (11) An order under Rule 27 of Order XXI.

" (18) An order under Rules 2, 11, 13 and 14 of Order XXXII.

" (24) An order under Rule 10 of Order XL.

IV. Under the Code, decrees and orders which have the force of decrees are appealable.

Orders which come under Sections 40, 108 and 109, Rule 11 of Order VII and Rule 2 of Order XXI are now decrees.

All orders are not appealable. Only those orders that are provided for in Section 82 read with Order XLII are appealable. There is no second appeal from an order which is appealable.

V. The Appealable orders have been classified and shown in the following Tables for facility of reference.

**A.**—*Orders appealable both under the old and the new Code.*

| *Section or Order and Rule of new Code.* | *Subject-matter.* | *Corresponding Section of Regn. II of 1065.* |
|---|---|---|
| Sec. 75. | Compensation for obtaining arrest, attachment or injunction on insufficient grounds ... | Sec. 476 |
| Sec. 82 (1) (*g*). | An order under any of the provisions of the Code imposing a fine or directing the arrest or detention in the Civil prison of any person, except where such arrest or detention is in execution of a decree ... ... | ,, 557 (29) |
| Or. I, r. 10 (2). | Striking out or adding the name of a person as plaintiff or defendant ... ... | ,, 28 |
| Or. II, r. 4. | Giving or refusing to give leave for adding a cause of action ... ... | ,, 40 |
| Or. VII, r. 10. | Returning a plaint to be presented to the proper Court ... ... | ,, 53 |
| Or. VIII, r. 10. | Pronouncing judgment against a party ... | ,, 108 |
| Or. IX, r. 9. | Rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit ... ... | ,, 98 |
| Or. IX, r. 13. | Rejecting an application (in a case open to appeal) for an order to set aside a decree passed *ex parte* ... ... | ,, 103 |
| Or. X, r. 4. | Pronouncing judgment against a party ... | ,, 115 |
| Or. XVI, r. 10. | Attachment of property ... ... | ,, 168 |
| Or. XVI, r. 20. | Pronouncing judgment against a party ... | ,, 172 |
| Or. XXI, r. 27. | Staying execution of the decree ... | ,, 237 |
| Or. XXI, r. 32. | Objection to the draft of a document or of an endorsement ... ... | ,, 258 |
| Or. XXI, r. 69. | Setting aside or refusing to set aside a sale ... | ,, 291 |
| Or. XXI, r. 89. | Do. ... | ,, 309 |
| Or. XXII, r. 9. | Refusing to set aside the abatement or dismissal of a suit ... ... | ,, 355 |
| Or. XXII, r. 10. | Giving or refusing to give leave to continue suit | ,, 356 |
| Or. XXXII, r. 11. | Directing guardian to pay costs ... | ,, 438 |
| Or. XXXII, r. 13. | Do. ... | ,, 434 |
| Or. XXXII, r. 14. | Do. ... | ,, 435 |
| Or. XXXIV. r. 3. | Orders in interpleader suits ... | ,, 455 |
| Or. XXXIV, r. 4. | Do. ... | ,, 452 |
| Or. XXXIV, r. 6. | Do. ... | ,, 454 |
| Or. XXXVI, r. 2. | Security for appearance of defendant ... | ,, 458 |
| Or. XXXVI, r. 3. | Application by surety to be discharged ... | ,, 459 |

A.—*Orders appealable both under the old and the new Code.*—(Concld.)

| *Section or Order and Rule of new Code.* | *Subject-matter.* | *Corresponding Section of Regn. II of 1065.* |
|---|---|---|
| Or. XXXVI, r. 6. | Attachment where cause not shown or security not furnished ... ... | ,, 464 |
| Or. XXXVII, r. 1. | Grant of temporary injunction ... | ,, 471 |
| Or. XXXVII, r. 2. | Injunction to restrain repetition or continuance of breach ... ... | ,, 472 |
| Or. XXXVII, r. 4. | Discharging, varying or setting aside order for injunction ... ... | ,, 475 |
| Or. XXXVII, r. 10. | Directing deposit or delivery of money ... | ,, 481 |
| Or. XXXVIII, r. 1. | Appointment of receivers ... ... | ,, 482, Para 1 |
| Or. XXXIX, r. 8. | Superseding an arbitration ... | ,, 493 |
| Or. XXXIX, r. 12. | Modifying or correcting an award ... | ,, 497 |
| Or. XL, r. 18. | Refusing to re-admit an appeal ... | ,, 529 |
| Or. XL, r. 20. | Refusing to re-hear an appeal ... | ,, 531 |
| Or. XL, r. 22. | Remanding case ... ... | ,, 533 |

B.—*Orders made appealable under the new Code.*

| *Section or Order and Rule of new Code.* | *Subject-matter.* | *Corresponding Section of Regn. II of 1065.* |
|---|---|---|
| Sec. 75. | Compensation for wrongful arrest or attachment ... ... ... | Sec. 470 |
| Or. XI, r. 21. | Order on non-compliance with order for discovery or inspection of documents... ... | ,, 131 |
| Or. XXIII, r. 3. | Recording or refusing to record an agreement, compromise or satisfaction ... ... | ,, 359 |
| Or. XXV, r. 2. | Rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit ... ... ... | ,, 366 |
| Or. XXXII, r. 2. | Directing pleader to pay costs ... ... | ,, 422 |
| Or. XXXVIII, r. 4. | Enforcement of receiver's duties | |
| Or. XXXIX, r. 11. | Award stated in the form of a special case ... | Secs. 495 & 496 |
| Or. XXXIX, r. 17. | Filing or refusing to file an agreement to refer to arbitration ... ... ... | Sec. 502 |
| Or. XXXIX, r. 18. | Staying or refusing to stay a suit | |
| Or. XXXIX, r. 21. | Filing or refusing to file award in an arbitration without intervention of Court ... ... | ,, 505 |
| Or. XL, r. 10. | Refusing to restore an appeal ... ... | ,, 521 |
| Or. XLV, r. 4. | Granting an application for review ... | ,, 572 |

**C.**—*Orders appealable under the old Code, but not appealable under the new Code.*

| *Order and Rule of New Code.* | *Subject-matter.* | *Corresponding Section of Regn. II of 1065.* |
|---|---|---|
| Omitted. | Orders staying proceedings in a suit ... | Sec. 17 |
| Or. III, r. 1, | Directing a party to appear in person ... | „ 32 |
| Or. V, r. 3 (1). | Do. ... | „ 62 |
| Omitted. | Orders excluding a cause of action ... | „ 43 |
| Or. VI, r. 17. | Orders returning plaint for *amendment* ... | Sec. 49 (b) also Sec. 111 |
| Or. VIII, r. 6 (1) & (2). | Orders setting off or refusing to set-off ... | „ 106 |
| Or. XXI, r. 15. | Orders rejecting or returning for amendment applications for execution of decree ... | „ 239 |
| Or. XIII, r. 8. | Orders directing documents to be impounded ... | „ 138 |
| Or. XIII, r. 11. | Orders directing anything else to be impounded... | „ 140 |
| Or. XVI, r. 4. | Orders for the attachment and sale of moveable property ... ... ... | „ 157 |
| Or. XVI, r. 12. | Orders for the sale of attached property ... | „ 165 |
| Omitted. | Orders relating to the execution of transferred decrees ... ... ... | „ 232 |
| Omitted. | Orders relating to giving of time for execution of decree ... ... ... | „ 254 |
| Or. XXI, r. 88. | Orders for setting aside or refusing to set aside a sale of immovable property on ground of judgment-debtor having no saleable interest ... | „ 310 |
| Sec. 51 cl. (2) & (3) (see also Sec. 47). | Orders relating to release of sick debtors ... | Sec. 325, Para 2 and Sec. 331 cl. (*g*) |
| Omitted. | Orders in insolvency matters ... | Ss. 343, 344 & 345 |
| Omitted. | Orders for bringing the legal representative of plaintiff or for proceeding with the suit on the application of defendant ... ... | Sec. 350, Para 2 |
| Or. XXII, r. 5. | Orders determining who is legal representative... | Sec. 351 |
| Or. XXII, r. 4. | Orders in regard to representative of defendant... | „ 352 |
| Or. XXII, r. 8. | Orders dismissing a suit for insolvent plaintiff's failure to give security ... ... | „ 354 |

*N. B.*—Under the new Code, orders under (1) Or. XXI, r. 2 [= Section 255], and (2) Sec. 109 [ = Section 249 ] which were treated in the old Code as orders are now treated as decrees.

---

Procedure.

2. The Rules of Order XL shall apply, so far as may be, to appeals from orders:

Provided that, in the case of appeals against interlocutory orders made prior to decree, the Court which passed the order appealed from shall not send the records unless an order has been made for the stay of further proceedings in that Court.

---

## ORDER XLIII.

### Pauper Appeals.

Who may appeal as pauper.

1. Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as a pauper, subject, in all matters, including the presentation of such application, to the provisions relating to suits by paupers, in so far as those provisions are applicable:

Procedure on application for admission of appeal.

Provided that the Court shall reject the application unless, upon a perusal thereof and of the judgment and decree appealed from, it sees reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

---

**Or. XLII, r. 2** [= S. 559 = *Or. XLIII, r. 2*]

1. For Section 559 of the old Regulation, see under Section 86 *Supra*.

2. The Rule in the Indian Code does not contain the Proviso. It was added by the Select Committee who said:—"This is intended to prevent obstruction to the further progress pending appeal, unless a stay order is passed by the Appellate Court."

**Case Law.**

See Sec. 108.—**10 T. L. R. App., 7.**

---

**Or. XLIII, r. 1** [= S. 561 = *Or. XLIV, r. 1*].

1. Section 561 of the old Regulation was as follows:—

"561. *Who may appeal as pauper.*—Any person entitled under this Code or any other law to prefer an appeal, who is unable to pay the fee required for the petition of appeal, may, on presenting an application accompanied by a memorandum of appeal, be allowed to appeal as a pauper, subject to the Rules contained in Chapters XXVI, XXXIX, XL and XLI, in so far as those Rules are applicable:

Provided that the Court.........erroneous or unjust."

[The Chapters referred to, deal with the following:—

XXVI.— Suits by Paupers.

XXXIX.—Of appeals from original decrees.

Inquiry into pauperism.

2. The inquiry into the pauperism of the applicant may be made either by the Appellate Court or under the orders of the Appellate Court by the Court from whose decision the appeal is preferred :

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court from whose decree the appeal is preferred, no further inquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees cause to direct such inquiry.

## ORDER XLIV.

### Reference.

Reference of question to High Court.

1. Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

---

XL.—Of appeals from appellate decrees.

XLI.—Of appeals from Orders.]

II. The present Rule reproduces that in the British Indian Code. About the addition of the words "in all matters including the presentation of such application," the Indian Special Committee said :—"Words have been added to avoid the conclusion at which the Madras High Court has recently arrived (I. L. R., 26 Mad , 369)."

In the Madras case referred to, it was held that, in the absence of the words now added, the rule as to the *presentation* of a pauper's petition (see Or. XXXIII, r. 3) did not apply to pauper appeals.

III. See under Order XXXIII, Rule 1.—
**2 T. L. R. App., 7.**

IV. For Form of Application to appeal *in forma pauperis*, see Appendix H, Form No. 10.

For Notice of appeal *in forma pauperis*, see Appendix H, Form No. 11.

**Case Law.**

1. Before granting leave to appeal as pauper, the Court must be satisfied that there is something wrong on the face of the decree, or, in the words of the provision, that the decree is contrary to law or some usage having the force of law or is otherwise erroneous or unjust. For this purpose, it is permissible to look into the application, judgment and decree alone and no other record. If the Court is not satisfied, it has no option but to reject the application.

2. The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or make an order contingent upon the decision of the High Court on the point referred ;

Court may pass decree contingent upon decision of High Court.

but no decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon the reference.

3. The High Court, after hearing the parties if they appear and desire to be heard, shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

Judgment of High Court to be transmitted, and case disposed of accordingly.

4. The costs (if any) consequent on a reference for the decision of the High Court shall be costs in the case.

Costs of reference to High Court.

---

The provision is a necessary safeguard introduced by the Legislature for the benefit of litigants who find themselves opposed by paupers, and is apt to be overlooked.—
**17 T. L. J.,** ***608.***

**2.** The application referred to in Order **XLIII,** Rule 1 and the memorandum of appeal are really quite distinct. The application should state facts showing that the applicant is a pauper and that the decree of the lower Court is open to the objections specified in the Rule. The memorandum of appeal is not expected to contain facts. Though the memorandum of appeal accompanies the application, it is not part of it.—
**18 T. L. J.,** ***1183.***

**3.** In the case of an application for leave to appeal ***in forma pauperis,*** the period required for obtaining a copy of the judgment of the lower Court cannot be excluded.—
**45 T. L. R.,** ***301.***

**4.** See also—
Or. XL, r. 10.—**44 T. L. R.,** ***455***
**(=19 T. L. J.,** ***150*****).**

**Or. XLIII, r. 2** [=S. 562=*Or. XLIV, r. 2*]

**Or. XLIV, r. 1** [= S. 563=*Or. XLVI, r. 1*]
See Section 87, *Supra.*

**Or. XLIV, r. 2** [=S. 564=*Or. XLVI, r. 2*]

The second Paragraph of the old Section ran as follows:—"but no execution shall be issued, property sold, or person imprisoned any case in which such reference is made, until the receipt of a copy of the judgment of the High Court upon such reference."

**Or. XLIV, r. 3** [=S. 565=*Or. XLVI, r. 3*]

Section 565 of the old Regulation was as follows:—"The High Court shall hear the parties to the case in which the reference is made, in person or by their respective pleaders and shall decide the point......in conformity with the decision of the High Court."

**Or. XLIV, r. 4**[=S. 566=*Or. XLVI, r. 4*]

Power to alter, etc., decree of Court making reference.

5. Where a case is referred to the High Court under Rule 1, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed or made in the case out of which the reference arose, and make such order as it thinks fit.

## ORDER XLV.

### Review.

Application for review of judgment.

1. (1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court, in non-appealable cases,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

---

Or. XLIV, r. 5 [=S. 567=*Or. XLVI, r. 5*] Or. XLV, r. 1 [=S. 569=*Or. XLVII, r. 1*]

See Section 88 *Supra*.

To whom applications for review may be made.

2. An application for review of a decree or order of a Court, upon some ground other than the discovery of such new and important matter or evidence as is referred to in Rule 1 or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree or order shall be made only to the Judge who passed the decree or made the order sought to be reviewed; but any such application may, if the Judge who passed the decree or made the order has ordered notice to issue under Rule 4, Sub-rule (2), proviso (*a*), be disposed of by his successor.

---

**Or. XLV, r. 2** [=S. 570=*Or. XLVII, r. 2*]

1. The corresponding Section of Regulation II of 1065 was as follows:—

"570. *To whom applications for review may be made.*—Except upon the ground of the discovery of such new and important matter or evidence as aforesaid, or of some clerical error apparent on the face of the decree, no application for a review of judgment shall be made to any Judge other than the Judge who delivered it."

2. In the British Indian Rule, the words "not being a High Court" occur after the words "order of a Court".

3. The British Indian Rule does not contain the words "or order" before the words "shall be made". The words were not in the original Bill and were inserted by the Select Committee.

**Case Law.**

1. The object of a review being to correct evident error or to consider the merits of fresh facts or evidence which the parties could not have adduced at the original trial, the functions of a Court of Review are not co-extensive with those of a Court of Appeal. A successor in office is therefore incompetent to alter the judgment of his predecessor simply because he could not agree with him on a point of law.—**3 T. L. R.,** *20.*

Ref.—6 T. L. R., 78.
38 T. L. R., 297
(= 12 T. L. J., 359).

2. The suit was for the recovery of certain monies from a Devaswom. The first defendant who contested the suit as the representative of the Devaswom died in the course of the trial; but the plaintiff and the Vakils on both sides were not aware of the death at the time. The suit was decreed in favour of plaintiff in 1090. Subsequently plaintiff became aware of the death of first defendant and he applied for executing the decree impleading the second defendant as the legal representative of the deceased. The application was opposed and the contention raised was accepted by the High Court in second appeal. As his decree was rendered infructuous the plaintiff applied to the Munsiff in 1094 for a review of the previous judgment and for rehearing the suit after impleading the second defendant. The review application was allowed and the suit decreed in favour of plaintiff. The second defendant unsuccessfully appealed to the District Court. He then sought in second appeal to have the decree set aside and also presented a revision petition assailing the order. It was urged on his behalf that the application for review was time-barred; that the Munsiff who allowed the review had no jurisdiction to entertain it under Section 570, as he was not the Munsiff who decided the case at first and as there was no discovery of new and important matter or evidence and no clerical error apparent on the face of the record; and that the order allowing the review contravened the provisions of Section 572, Clause (*b*) [=Or.

XLV, r. 4] as there was no strict proof that the new and important matter was not within his knowledge when the decree was passed.

*Held.*—(1) The words "discovery of important matter" used in Section 570 were wide enough to cover a case like the present.

(2) As regards the sufficiency of the proof adduced, it was clear from the progress diary that the respondent as well as the Vakils on both sides were not aware of the first defendant's death on the date the trial was concluded and the suit was finally heard and on the day after when judgment was pronounced.

(3) An application for review presented more than three years after the date of the final decree cannot be admitted under any circumstances.— **40 T. L. R.,** *26* (**=13 T. L. J.,** *310*).

**3.** The judgment based on a compromise entered into by a minor plaintiff's mother as her next friend was sought to be reviewed by one acting on behalf of the minor on the ground that the compromise was fraudulently entered into by the minor's mother. The application was allowed by the District Judge; but there was no proof whatever of the allegation of fraud committed in connection with the compromise. In appeal by defendants 3 and 4, the order was objected to on the ground that the Judge had no jurisdiction to entertain the application and that even if he had the jurisdiction, it was wrongly exercised in favour of the applicant.

*Held.*—Only two courses are open to a minor who impugns a decree based on a compromise entered into by the next friend. He may either obtain redress in the suit itself in which judgment was rendered by applying for a review of the judgment or he may institute a fresh suit to set aside the decree. Apart from these, it is not open to him to apply for a revival of the suit.

Section 442 C. P. C., [ =Or. XXXII, r. 7] merely lays down what the effect of a compromise would be when it is entered into without the leave of the Court, and says nothing as to the procedure to be adopted by a minor who impugns a compromise decree as invalid under the Section. The procedure must be governed by the general law, and under that law it is clear that a motion for revival of the suit apart from one for review of judgment is not open to a minor who impugns a compromise decree as fraudulent.

Fraud in connection with the compromise on which a decree is based is 'new and important matter' within the meaning of Section 570, which would give the Judge jurisdiction to grant a review of the judgment of his predecessor in office. But under Section 572 [= Or. XLV, r. 4], an application for review on the ground of discovery of new and important matter or evidence should not be granted without strict proof of such allegation.

Where the predecessor in office has recorded a proceeding in clear terms that he was satisfied that the compromise was for the benefit of the minor, such a certificate should not be brushed aside as mere formality, in the absence of evidence that it was so.

In the face of that certificate, it lay upon the applicant to convince the Court by satisfactory proofs that the compromise was vitiated by fraud or collusion or that the interests of the minor were not properly consulted by the next friend or that the Court was not informed of all the circumstances when it sanctioned the compromise. **41 T. L. R.,** *213* (**= 16 T. L. J.,** *127*).

**4.** The Insolvency Court's powers of review under Section 45 of the Insolvency Regulation are controlled by the restrictions contained in Order XLV, Rule 2, of the Civil Procedure Code. Hence, a Judge has

Form of applications for review.

3. The provisions as to the form of preferring appeals shall apply, *mutatis mutandis*, to applications for review.

Application when rejected.

4. (1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

Application when granted.

(2) Where the Court is of opinion that the application for review should be granted, it shall grant the same:

Provided that—

(*a*) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and

(*b*) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

---

no jurisdiction to review his predecessor's order except on the ground of clerical or arithmetical error or the discovery of new and important matter in evidence. Section 46 of the Insolvency Regulation makes this clear.

Where a sale by the Official Receiver is held subject to confirmation by the Court and when the Court cancels the sale on the recommendation of the Official Receiver, the Court is doing only a ministerial act.—
**18 T. L. J.**, *990*.

**5.** The dismissal of a petition for the non-specification of the Order and Rule under which it was presented cannot be treated as a clerical error apparent on the face of the record within the meaning of Rule 2 of Order XLV.— **19 T. L. J.**, *1135*.

**6.** See also—

Sec. 23.—**44 T. L. R.**, *87*
( = **18 T. L. J.**, *1196*).

**Or. XLV, r. 3** [=S. 571
= *Or. XLVII, r. 3* ].

**Or. XLV, r. 4** [ = S. 572
= *Or. XLVII, r. 4*]

1. *Sub-Rule* (2).—The second Paragraph of the corresponding Section of the old Regulation ran thus :—

"If the Court be of opinion.........it shall grant the same, and the Judge shall record with his own hand his reasons for such opinion :

Provided that—

(*a*) no such application.........is applied for ;

(*b*) no such application .........proof of such allegation ; and

(*c*) an application made under Section 570 to the Judge who delivered the judgment, may, if that Judge has

Application for review in Court consisting of two or more Judges.

5. Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

Application when rejected.

6. (1) Where the application for a review is heard by more than one Judge and the Court is equally divided, the application shall be rejected.

(2) Where there is a majority, the decision shall be according to the opinion of the majority.

Order of rejection not appealable.
Objections to order granting application.

7. (1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to on the ground that the application was—

(*a*) in contravention of the provisions of Rule 2,

---

ordered notice to issue under Proviso (*a*) to this Section, be disposed of by his successor."

II. For Form of Notice to show cause why a review should not be granted, see Appendix H, Form No. 12.

**Case Law.**

1. Ordinarily when a review is admitted under Section 576 [=Or. XL, r. 8] and no order is made by the Court admitting the application, restricting the extent to which the review of judgment is entertained, the whole case is re-opened, and the parties will thereby be restored in *statu quo ante*.

The term "opposite party" in Section 572 must necessarily mean that party whose interests are not identical with the petitioner's own, and not necessarily a plaintiff or a defendant, as the case may be, ranged on the opposite side. Hence, notice of review should be given, in the case to 6th defendant who prayed to have the review re-entertained and decided after hearing his contentions. [In the case, 4th defendant applied for a review of judgment and the Court granted it after giving notice to plaintiff alone under Section 572.],—

**2 S. D.,** ***271.***

2. See also—

Sec. 88.— **12 T. L. J.,** ***53.***
Or. XLV, r. 2.— **3 T. L. R.,** ***20.***
**41 T. L. R.,** ***218*** **(=16 T. L. J.,** ***127*****).**
" r. 7.— **18 T. L. R.,** ***167.***
**16 T. L. J.,** ***74.***

---

**Or. XLV, r. 5** [=S. 573= *Or. XLVII, r. 5*]

---

**Or. XLV, r. 6** [=S. 574=*Or. XLVII, r. 6*]

---

(b) in contravention of the provisions of Rule 4,

or

(c) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be taken at once by an appeal from the order granting the application or in any appeal from the final decree or order passed or made in the suit, or by way of revision by the High Court where the suit is triable as a small cause suit.

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under Sub-rule (2) unless notice of the application has been served on the opposite party.

---

Or. XLV, r. 7 [= S. 575=*Or. XLVII, r. 7*]

I. The corresponding Section of Regulation II of 1065 was as follows :—

"575. An order of the Court for rejecting the application shall be final, but whenever such application is admitted, the admission may be objected to on the ground that it was

(a) in contravention............

(b) in contravention............

(c) after the expiration.......... .....sufficient cause.

Such objection may be made at once by an appeal against the order granting the application, or may be taken in any appeal against the final decree or order made in the suit,

Where the application.........was called on for hearing, the Court may order it to be restored.........for hearing the same.

No order shall be made under this Section, unless the applicant has served the opposite party with notice in writing of the latter application."

[There is one more Paragraph in this Section for which see Rule 9 *Infra.*]

II. In Sub-Rule (1), the words "or by way of revision by the High Court where the suit is triable as a small cause suit" are new and are not found either in the British Indian Code or in the old Regulation. They were added by the Council on the motion of a Non-official Member who said :— "Now an appeal is provided under this Rule from an order granting review when it is against certain specific Sections of the Civil Procedure Code ; and two stages are allowed for preferring such appeal—the first stage being when the review is itself granted and the second stage when the decree is appealed from. Now there are certain cases in which no appeal is allowed, for example, in the case of Small Cause suits. In such cases, my submission is that an alternate method of attack may be pro-

Registry of application granted, and order for re-hearing.

8. When an application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

---

vided, enabling one to take the objection at the time of the revision by the High Court. It is only for that purpose that I add this amendment. * * The grant of review cannot be questioned by way of appeal or revision after decree. The stage at which the appeal may be tried has been specified and if a party does not take advantage of it, the High Court will decline to interfere at the final stages of revision with the order granting the appeal. There are cases where no appeal is allowed and it is absolutely necessary, if the party is not advised to prefer an appeal at once, to have some power. If he thinks he has got a strong case, he may not prefer an appeal."— *L. C. P., dated 13-2-1925.*

**Case Law.**

1. An order granting a review shall not by itself be open to appeal. But the Appellate Court is fully competent to consider the propriety or otherwise of the order granting the review in an appeal preferred against the judgment passed upon review.—
**3 T. L. R.,** ***20.***

2. If the ends of justice require the granting of the review, the Court seems to have no alternative but to grant it.

An erroneous admission of review is not sufficient to set aside the revised decree unless it is shown that it has miscarried justice.— **6 T. L. R.,** ***73.***
**3 S. D.,** ***295.***

2. A District Judge who passed an *ex-parte* decree ordered issue of notice of a review application put in by defendant to set aside the said decree. The Judge's successor in office disposed of it under Clause (c) of Section 572 [Or. XLV, r. 4] granting the application on the ground that the original summons did not appear to have been duly served, that the attachment in execution was a sham and so forth. The plaintiff appealed against the said order and it was contended on behalf of the defendant that there was no appeal in this case as it did not fall within any of the three classes of orders from which an appeal is allowed by Section 575.

*Held.*—(1) The defendant's contention was right as there was no appeal in the case by virtue of Section 575.

(2) This was not a fit case in which a revision under Section 568 [new Section 89] the power to exercise which is discretionary, should be granted.—
**18 T. L. R.,** ***167.***

3. The contravention of Section 572, C. P. C., [=Or. XLV, r. 4] referred to in Section 575 is not confined to cases covered by the Proviso to Section 572.—
**16 T. L. J.,** ***74.***

4. See also—

Sec. 88.—**12 T. L. J.,** ***53.***
,, 89.—**33 T. L. R.,** ***23.***
Or. XXII, r. 8.—**17 T. L. R. App.,** ***30.***

---

**Or. XLV, r. 8** [ = S. 576 = *Or. XLV, r. 8*]

**Case Law.**

A review may be granted either as to the entirety of the order assailed or as to a portion only thereof.

Order XLV, Rule 8, clearly leaves it optional with the Court to determine whether, when a review is granted, the case should be re-opened in part or in its entirety. So, when a review of a decision has been admitted, the whole case is not necessarily re-opened thereby.— **19 T. L. J.,** ***740.***

Bar of certain applications.

9. No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

## ORDER XLVI.

### Miscellaneous.

Process to be served at expense of party issuing.

1. (1) Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

Costs of service.

(2) The Court-fee chargeable for such service shall be paid within a time to be fixed before the process is issued.

Orders and notices how served.

2. All orders, notices and other documents required by this Code to be given to or served on any person shall be served in the manner provided for the service of summons.

Use of Forms in Appendices.

3. The Forms given in the Appendices, with such variation as the circumstances of each case may require, shall be used for the purposes therein mentioned.

---

**Or. XLV, r. 9** [=S. 575, last Para = *Or. XLVII, r. 9*]

1. The last Paragraph of Section 575 was as follows :—

"No application to review an order passed on review or on application for a review shall be entertained."

2. For the previous paragraphs, see Rule 7 above.

**Case Law.**

The Rule prohibiting the review of an order passed on review cannot apply to interlocutory orders.— **19 T. L. J.,** ***1324.***

**Or. XLVI, r. 1** [=S. 87 = *Or. XLVIII, r. 1*]

**Or. XLVI, r. 2** [Cf. Ss. 88 and 117 = *Or. XLVIII, r. 2*]

I. Sections 88 and 117 of the old Regulation were as follow :—

"88. *Notices and orders in writing how served.*—All notices and orders required by this Code to be given to or served on any person shall be in writing, and shall be served in the manner hereinbefore provided for the service of summons."

"117. *Service of interrogatories.*—Interrogatories delivered under Section 116 shall be served on the pleader (if any) of the party interrogated, or in the manner hereinbefore provided for the service of summons and the provisions of Sections 75, 76, 77 and 78 shall, in the latter case, apply so far as may be practicable."

[Section 116 = Or. XI, r. 1 ; Sections 75-78 = Or. V, rr, 16-20 (1).]

II. See Section 106 *Supra.*

## ORDER XLVII.

### Suits triable as Small Causes.

Suits triable as Small Causes.

1. The provisions hereinafter specified shall not extend to Civil Courts in exercise of their jurisdiction in non-appealable cases—

(a) so much of this Schedule as relates to—

(i) suits specified in Schedule II of the Travancore Civil Courts Regulation, 1084, or the execution of decrees in such suits;

(ii) the interest of a partner in partnership property;

(iii) the settlement of issues; and

(b) the following Rules and Orders,—

Order II, Rule 1 (frame of suit);

Order X, Rule 3 (record of examination of parties);

Order XV, except so much of Rule 4 as provides for the pronouncement at once of judgment;

Order XVIII, Rules 5 to 11 (evidence);

Orders XL to XLIII (appeals);

Order XLV, Rules 3, 5, 6, 7 (1) (review).

---

Or. XLVI, r. 3 [= S. 582 = *Or. XLVIII, r. 3*]

Section 582 of the old Regulation was as follows:—

"582. *Power to frame Forms.* - The High Court may, from time to time, frame Forms for any proceedings in such Court and in Courts subordinate thereto."

Or. XLVII, r. 1 [= ,, = *Or. L, r. 1*]

# APPENDIX A.

## PLEADINGS.

(1) Titles of Suits.

In the Court of......................

A. B. (*add description and residence*)......*Plaintiff.*

*against*

C. D. (*add description and residence*)......*Defendant.*

(2) Description of Parties in particular Cases

The Dewan of Travancore.

The Division Peishkar of......

The A. B. Company, Limited, having its registered office at......

A. B., a public officer of the C. D. Company.

A. B. (*add description and residence*), on behalf of himself and all other creditors of C. D. late of (*add description and residence*).

A. B. (*add description and residence*), on behalf of himself and all other holders of debentures issued by the .... Company, Limited.

The Official Receiver.

A. B. a minor (*add description and residence*) by C. D. his next friend,

A. B. (*add description and residence*), a person of unsound mind [*or* of weak mind], by C. D., his next friend.

A. B., a firm carrying on business in partnership at......

A. B. (*add description and residence*), by his constituted attorney C. D. (*add description and residence*).

A. B. *(add description and residence)* Uralan or manager of......... Devaswom.

---

A. B. *(add description and residence)*, executor of C. D., deceased.

---

A. B. *(add description and residence)*, heir of C. D., deceased.

---

(3) PLAINTS.

---

No. 1.

**Money Lent.**

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. On the......day of......11..., he lent the defendant......rupees re-payable on the......day of......

2. The defendant has not paid the same, except......rupees paid on the......day of......11...

[ *if the plaintiff claims exemption from any law of limitation, say:*—]

3. The plaintiff was a minor [*or* insane] from the......day of......till the day of......

4. [*Facts showing when the cause of action arose and that the Court has jurisdiction.*]

5. The value of the subject-matter of the suit for the purpose of jurisdiction is......rupees and for the purpose of court-fees is .....rupees.

6. The plaintiff claims......rupees, with interest at......per cent. from the......day of......11...

---

No. 2.

**Money overpaid.**

*(Title.)*

*A. B.* the above-named plaintiff, states as follows:—

1. On the......day of......11..., the plaintiff agreed to buy and the defendant agreed to sell......bars of silver at......annas per tola of fine silver.

2. The plaintiff procured the said bars to be assayed by *E. F.*, who was paid by the defendant for such assay, and *E. F.* declared each of the bars to contain 1,500 tolas of fine silver, and the plaintiff accordingly paid the defendant......rupees.

3. Each of the said bars contained only 1,200 tolas of fine silver, of which fact the plaintiff was ignorant when he made the payment.

4. The defendant has not repaid the sum so overpaid.

[*As in paras 4 and 5 of Form No. 1 and Relief claimed.*]

---

No. 3.

**Goods sold at a fixed Price and delivered.**

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows:—

1. On the......day of ..... 11..., *E F.* sold and delivered to the defendant [one hundred barrels of flour, *or* the goods mentioned in the schedule hereto annexed, *or* sundry goods ].

2. The defendant promised to pay......rupees for the said goods on delivery [*or* on the......day of ....., *some day before the plaint was filed*].

3. He has not paid the same.

4. *E. F.* died on the ......day of......11...By his last Will he appointed his brother, the plaintiff, his executor.

[*As in paras 4 and 5 of Form No. 1.*]

5. The plaintiff as executor of *E. F.* claims [*Relief claimed* ].

---

No. 4.

**Goods sold at a reasonable Price and delivered.**

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows :—

1. On the......day of......11..., plaintiff sold and delivered to the defendant [*sundry articles of house-furniture*], but no express agreement was made as to the price.

2. The goods were reasonably worth......rupees.

3. The defendant has not paid the money.

[*As in paras 4 and 5 of Form No. 1 and Relief claimed.*]

---

No. 5.

**Goods made at Defendant's Request, and not Accepted.**

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows:—

1. On the......day of......11..., *E. F.* agreed with the plaintiff that the plaintiff should make for him [*six tables and fifty chairs*] and that *E. F.* should pay for the goods on delivery......rupees.

2. The plaintiff made the goods, and on the..... day of ......11.. offered to deliver them to *E. F.*, and has ever since been ready and willing so to do

3. *E. F.* has not accepted the goods or paid for them.

[*As in paras 4 and 5 of Form No. 1 and Relief claimed.*]

---

No. 6.

**Deficiency upon a Re-sale [Goods sold at Auction.]**

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows:—

1. On the......day of ..... 11.., the plaintiff put up at auction sundry [*goods*], subject to the condition that all goods not paid for and removed by the purchaser within [*ten days*] after the sale should be re-sold by auction on his account, of which condition the defendant had notice.

2. The defendant purchased [*one crate of crockery*] at the auction at the price of......rupees.

3. The plaintiff was ready and willing to deliver the goods to the defendant on the date of the sale and for [*ten days*] after.

4. The defendant did not take away the goods purchased by him, nor pay for them within [*ten days*] after the sale, not afterwards.

5. On the......day of......11..., the plaintiff re-sold the [*crate of crockery*], on account of the defendant, by public auction, for......rupees.

6. The expenses attendant upon such re-sale amounted to......rupees.

7. The defendant has not paid the deficiency thus arising, amounting to......rupees.

[*As in paras 4 and 5 of Form No. 1, and Relief claimed.*]

---

No. 7.

**Services at a reasonable rate.**

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows:—

1. Between the......day of......11..., and the......day of......11..., at... plaintiff [*executed sundry drawings, designs and diagrams*] for the defendant,

at his request; but no express agreement was made as to the sum to be paid for such services.

2. The services were reasonably worth ......rupees.

3. The defendant has not paid the money.

[*As in paras 4 and 5 of Form No. 1 and Relief claimed.*]

---

No. 8.

**Services and Materials at a reasonable cost.**

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows:—

1. On the......day of......11..., at...,the plaintiff built a house [known as No......,in..... ], and furnished the materials therefor, for the defendant, at his request, but no express agreement was made as to the amount to be paid for such work and materials.

2. The work done and materials supplied were reasonably worth... rupees.

3. The defendant has not paid the money.

[*As in paras 4 and 5 of Form No. 1, and Relief claimed.*]

---

No. 9.

**Use and Occupation.**

(*Title.*)

*A. B.*, the above-named plaintiff, executor of the Will of *X. Y.*, deceased, states as follows:—

1. That the defendant occupied the [house No.......Street ], by permission of the said *X. Y.*, from the......day of ......11...,until the...day of...... 11..., and no agreement was made as to payment for the use of the said premises.

2. That the use of the said premises for the said period was reasonably worth......rupees.

3. The defendant has not paid the money.

[*As in paras 4 and 5 of Form No. 1.*]

4. The plaintiff as executor of *X. Y.*, claims [*Relief claimed*].

---

No. 10.

## On an Award.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. On the......day of......11..., the plaintiff and defendant, having a difference between them concerning [a demand of the plaintiff for the price of ten barrels of oil which the defendant refused to pay], agreed in writing to submit the difference to the arbitration of *E. F.* and *G. H.*, and the original document is annexed hereto.

2. On the......day of......11..., the arbitrators awarded that the defendant should [pay the plaintiff......rupees].

3. The defendant has not paid the money.

[*As in paras 4 and 5 of Form No. 1 and Relief claimed.*]

---

No. 11.

## On a Foreign Judgment.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. On the......day of......11..., at ....., in the State [*or* Kingdom] of..., the .....Court of that State [*or* Kingdom], in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff.........rupees, with interest from the said date.

2. The defendant has not paid the money.

[*As in paras 4 and 5 of Form No. 1, and Relief claimed.*]

---

No. 12.

## Against Surety for Payment of Rent.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. On the......day of......11..., *E. F.* hired from the plaintiff for the term of...years, the [house No........ Street], at the annual rent of...rupees, payable [monthly].

2. The defendant agreed, in consideration of the letting of the premises to *E. F.*, to guarantee the punctual payment of the rent.

3. The rent for the month of......11..., amounting to .........rupees, has not been paid.

[*If, by the terms of the agreement, notice is required to be given to the surety, add:—*]

4. On the......day of......11..., the plaintiff gave notice to the defendant of the non-payment of the rent, and demanded payment thereof

5. The defendant has not paid the same.

[*As in paras 4 and 5 of Form No. 1, and Relief claimed.*]

---

No. 13.

## Breach of Agreement to purchase land.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows:—

1. On the......day of......11..., the plaintiff and defendant entered into an agreement, and the original document is hereto annexed.

[*Or*, on the......day of......11..., the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty parahs of land in the Pakuthi of ......for......rupees.]

2. On the......day of......11..., the plaintiff, being then the absolute owner of the property [and the same being free from all incumbrances as was made to appear to the defendant], tendered to the defendant a sufficient instrument of transfer of the same [*or*, was ready and willing, and is still ready and willing, and offered, to transfer the same to the defendant by a sufficient instrument] on the payment by the defendant of the sum agreed upon.

3. The defendant has not paid the money.

[*As in paras 4 and 5 of Form No. 1, and Relief claimed.*]

---

No. 14.

## Not delivering goods sold.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows:—

1. On the......day of......11..., the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff on the......day of......11..., and that the plaintiff should pay therefor......rupees on delivery.

2. On the [said] day the plaintiff was ready and willing, and offered, to pay the defendant the said sum upon delivery of the goods.

3. The defendant has not delivered the goods, and the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

*[As in paras 4 and 5 of Form No. 1, and Relief claimed.]*

---

No. 15.

**Wrongful Dismissal.**

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. On the......day of ......11..., the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, *or* in the capacity of foreman, *or as the case may be*] , and that the defendant should employ the plaintiff as such for the term of [one year] and pay him for his services... ..rupees [monthly].

2. On the......day of......11 , the plaintiff entered upon the service of the defendant and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year whereof the defendant always has had notice.

3. On the......day of......11..., the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

*[As in paras 4 and 5 of Form No. 1, and Relief claimed.]*

---

No. 16.

**Breach of Contract to serve.**

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. On the......day of......11..., the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an [annual] salary of......rupees, and that the defendant should serve the plaintiff as [an artist] for the term of [one year].

2. The plaintiff has always been ready and willing to perform his part of the agreement [and on the...... day of . ...11...offered so to do].

3. The defendant [entered upon] the service of the plaintiff on the above-mentioned day, but afterwards, on the......day of......11 .. he refused to serve the plaintiff as aforesaid.

*[As in paras 4 and 5 of Form No. 1, and Relief claimed.]*

---

No. 17.

**Against a Builder for defective workmanship.**

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. On the......day of......11...,the plaintiff and defendant entered into an agreement, and the original document is hereto annexed. [*Or state the tenor of the contract.*]

[2. The plaintiff duly performed all the conditions of the agreement on his part.]

3. The defendant [built the house referred to in the agreement in a bad and unworkmanlike manner.]

[*As in paras 4 and 5 of Form No. 1, and Relief claimed.*]

---

No. 18.

**On a Bond for the Fidelity of a Clerk.**

*(Title.)*

*A. B.*, the above named plaintiff, states as follows :—

1. On the......day of......11..., the plaintiff took *E. F.*, into his employment as a clerk.

2. In consideration thereof, on the......day of........11......, the defendant agreed with the plaintiff that, if *E. F.*, should not faithfully perform his duties as a clerk to the plaintiff or should fail to account to the plaintiff for all monies, evidences of debt or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding......rupees.

[*Or*, 2. In consideration thereof, the defendant by his bond of the same date bound himself to pay the plaintiff the penal sum of...rupees, subject to the condition that if *E. F.* should faithfully perform his duties as clerk and cashier to the plaintiff and should justly account to the plaintiff for all monies, evidences of debt or other property which should be at any time held by him in trust for the plaintiff, the bond should be void.]

[*Or*, 2. In consideration thereof on the same date the defendant executed a bond in favour of the plaintiff, and the original document is hereto annexed.]

3. Between the ......day of......11...and the......day of......11......,

*E. F.* received money and other property, amounting to the value of...rupees, for the use of the plaintiff, for which sum he has not accounted to him, and the same still remains due and unpaid.

[*As in paras 4 and 5 of Form No. 1 and Relief claimed.*]

---

No. 19.

## By Tenant against Landlord, with Special Damage.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows :—

1. On the......day of......11..., the defendant, by a registered instrument, let to the plaintiff [the house No...,Street] for the term of...years, contracting with the plaintiff, that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.

2. All conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.

3. On the......day of......11...during the said term, *E. F.*, who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4. The plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend......rupees in moving, and lost the custom of *G. H.* and *I. J.* by such removal.]

[*As in paras 4 and 5 of Form No. 1, and Relief claimed.*]

---

No. 20.

## On An Agreement of Indemnity.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows :—

1. On the......day of......11..., the plaintiff and defendant, being partners in trade under the style of *A. B.* and *C. D.*, dissolved the partnership, and mutually agreed that the defendant should take and keep all the partnership property, pay all debts of the firm and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the firm.

2. The plaintiff duly performed all the conditions of the agreement on his part.

3. On the......day of......11..., [a judgment was recovered against the plaintiff and defendant by *E. F.*, in the Court of......, upon a debt due from the firm to *E. F.*, and on the...... day of......11...,] the plaintiff paid......rupees [in satisfaction of the same.]

4. The defendant has not paid the same to the plaintiff.

[*As in paras 4 and 5 of Form No. 1, and Relief claimed.*]

---

No. 21.

**Procuring Property by Fraud.**

(*Title.*)

***A. B.*, the above-named plaintiff, states as follows :—**

1. On the......day of......11..., the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he, the defendant, was solvent, and worth......rupees over all his liabilities.]

2. The plaintiff was thereby induced to sell [and deliver] to the defendant, [dry goods] of the value of......rupees.

3. The said representations were false [*or state the particular falsehoods*] and were then known by the defendant to be so.

4. The defendant has not paid for the goods. [*Or, if the goods were not delivered*]. The plaintiff, in preparing and shipping the goods and procuring their restoration, expended...... rupees.

[*As in paras 4 and 5 of Form No. 1, and Relief claimed.*]

---

No. 22.

**Fraudulently Procuring Credit to be given to another Person.**

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows :—

1. On the...... day of......11..., the defendant represented to the plaintiff that *E. F.*, was solvent and in good credit, and worth......rupees over all his liabilities [or that *E. F.*, then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit.]

2. The plaintiff was thereby induced to sell to *E. F.* [rice] of the value of......rupees [on......months' credit]

The said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [*or* to deceive and injure the plaintiff.]

4. *E. F.* [did not pay for the said goods at the expiration of the credit aforesaid, *or*] has not paid for the said rice, and the plaintiff has wholly lost the same.

[*As in paras 4 and 5 of Form No. 1, and Relief claimed.*]

---

No. 23.

## Polluting the Water under the Plaintiff's Land.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows :—

The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain land called .....and situate in.........and of a well therein, and of water in the well, and was entitled to the use and benefit of the well and of the water therein, and to have certain springs and streams of water which flowed and ran into the well to supply the same to flow or run without being fouled or polluted.

2. On the......day of......11..., the defendant wrongfully fouled and polluted the well and the water therein and the springs and streams of water which flowed into the well.

3. In consequence the water in the well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the well and water.

[*As in paras 4 and 5 of Form No. 1, and Relief claimed.*]

---

**No. 24.**

## Carrying on a Noxious Manufacture.

(*Title*).

*A. B.*, the above named plaintiff, states as follows :—

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called......, situate in......

2. Ever since the......day of......11..., the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and

noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the lands.

3. Thereby the trees, hedges, herbage and crops of the plaintiff growing on the lands were damaged and deteriorated in value, and the cattle and live-stock of the plaintiff on the lands became unhealthy, and many of them were poisoned and died.

4. The plaintiff was unable to graze the lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep and farming-stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the lands as he otherwise would have had.

[*As in paras 4 and 5 of Form No. 1, and Relief claimed.*]

---

No. 25.

**Obstructing a Right of Way.**

(*Title*).

*A. B.*, the above named plaintiff, states as follows :—

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the Pakuthi of.........].

2. He was entitled to a right of way from the [house] over a certain field to a public highway and back again from the highway over the field to the house, for himself and his servants [with vehicles or on foot] at all times of the year.

3. On the......day of......11..., defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles, *or* on foot *or* in any manner] along the way [and has ever since wrongfully obstructed the same].

4. (*State special damage, if any*).

[*As in paras 4 and 5 of Form No. 1, and Relief claimed.*]

---

No. 26.

**Obstructing a Highway.**

(*Title*).

1. The defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from .........to.........so as to obstruct it.

2. Thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones [*or* into the said trench] and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

[*As in paras 4 and 5 of Form No. 1, and Relief claimed.*]

---

No. 27.

### Diverting a Water-course.

(*Title*).

*A. B.*, the above named plaintiff, states as follows:—

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a [stream] known as the......in the Pakuthi of...... Taluk of . ...

2. By reason of such possession the plaintiff was entitled to the flow of the stream for working the mill.

3. On the... . day of.........11..., the defendant, by cutting the bank of the stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4. By reason thereof the plaintiff has been unable to grind more than ......sacks per day, whereas, before the said diversion of water, he was able to grind......sacks per day.

[*As in paras 4 and 5 of Form No. 1, and Relief claimed.*]

---

No. 28.

### Obstructing a Right to use Water for Irrigation.

(*Title*).

*A. B.*, the above named plaintiff, states as follows:—

1. Plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, etc., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. On the ......day of .....11 .., the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

[*As in paras 4 and 5 of Form No. 1, and Relief claimed.*]

---

No. 29.

## Injuries caused by Negligence on a Railroad.

*(Title.)*

*A. B.*, the above named plaintiff, states as follows :—

1. On the......day of......11 .., the defendants were common carriers of passengers by railway between...... and... ..

2. On that day the plaintiff was a passenger in one of the carriages of the defendants on the said railway.

3. While he was such passenger, at......[*or* near the station of......*or* between the stations of......and......], a collision occurred on the said railway caused by the negligence and unskilfulness of the defendants' servants, whereby the plaintiff was much injured [having his leg broken, his head cut, *etc., and state the special damage, if any, as*], and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as [salesman].

[*As in paras 4 and 5 of Form No. 1, and Relief claimed.*]

(*Or thus* :—2. On that day the defendants by their servants so negligently and unskilfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, etc., *as in para 3.*)

No. 30.

## Injuries caused by Negligent Driving.

*(Title).*

*A. B.*, the above named plaintiff, states as follows :—

1. The plaintiff is a shoemaker, carrying on business at......The defendant is a merchant of......

2. On the......day of...11..., the plaintiff was walking southward along Street (A) in the Town of......at about 3 o'clock in the afternoon. He was obliged to cross Street (B) which is a street running into Street (A) at right angles. While he was crossing this street, and just before he could reach the foot-payment on the further side thereof, a carriage of the defendant, drawn by two horses under the charge and control of the defendant's servants, was negligently, suddenly and without any warning turned at a rapid and dangerous pace out of Street (B) into Street (A). The pole of the

carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business and incurred heavy medical and other expenses, and sustained great loss of business and profits.

[*As in paras 4 and 5 of Form No. 1, and Relief claimed.*]

No. 31.

**For Malicious Prosecution.**

(*Title.*)

*A. B.*, the above named plaintiff states as follows :—

1. On the..... day of......11..., the defendant obtained a warrant of arrest from... ..[a Magistrate of the said Town *or as the case may be*] on a charge of ......., and the plaintiff was arrested thereon, and imprisoned for ........[days *or* hours, and gave bail in the sum of......rupees to obtain his release].

2. In so doing the defendant acted maliciously and without reasonable or probable cause.

3. On the......day of.......11..., the Magistrate dismissed the complaint of the defendant and acquitted the plaintiff.

4. Many persons whose names are unknown to the plaintiff, hearing of the arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him ; *or* in consequence of the said arrest, the plaintiff lost his situation as clerk to one *E. F. or* in consequence the plaintiff suffered pain of body and mind, and was prevented from transacting his business and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.

[*As in paras 4 and 5 of Form No. 1, and Relief claimed.*]

No. 32.

**Movables wrongfully detained.**

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows:—

1. On the......day of..... 11.., plaintiff owned [*or state facts showing a right to the possession*] the goods mentioned in the schedule hereto annexed [*or describe the goods*], the estimated value of which is......rupees.

2. From that day until the commencement of this suit the defendant has detained the same from the plaintiff.

3. Before the commencement of the suit, to wit, on the...day of...... 11...the plaintiff demanded the same from the defendant, but he refused to deliver them.

[*As in paras 4 and 5 of Form No. 1.*]

6. The plaintiff claims—

(1) delivery of the said goods, or......rupees, in case delivery cannot be had;

(2) ......rupees compensation for the detention thereof.

[*The Schedule.*]

---

No. 33.

**Against a fraudulent Purchaser and his Transferee with Notice.**

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows :—

1. On the......day of......11..., the defendant *C. D.*, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth...rupees over all his liabilities.]

2. The plaintiff was hereby induced to sell and deliver to *C. D.*, [one hundred boxes of tea ], the estimated value of which is......rupees.

3. The said representations were false, and were then known by *C. D.* to be so [*or* at the time of making the said representations, *C. D.* was insolvent, and knew himself to be so].

4. *C. D.* afterwards transferred the said goods to the defendant *E. F.* without consideration [*or* who had notice of the falsity of the representation.]

[*As in paras 4 and 5 of Form No. 1.*]

7. The plaintiff claims—

(1) delivery of the said goods, or..... rupees, in case delivery cannot be had;

(2) ..... rupees compensation for the detention thereof.

---

No. 34.

## Rescission of a Contract on the Ground of Mistake.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. On the......day of......11..., the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at . , contained [ten parahs].

2. The plaintiff was thereby induced to purchase the same at the price of......rupees in the belief that the said representation was true, and signed an agreement, of which the original is hereto annexed. But the land has not been transferred to him.

3. On the......day of......11..., the plaintiff paid the defendant...... rupees as part of the purchase-money.

4. That the said piece of ground contained in fact only [five parahs].

[*As in paras 4 and 5 of Form No. 1.*]

7. The plaintiff claims—

(1) ......rupees, with interest from the......day of......11...;

(2) that the said agreement be delivered up and cancelled.

---

No. 35.

## An Injunction Restraining Waste.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. The plaintiff is the absolute owner of [ *describe the property.* ]

2. The defendant is in possession of the same under a lease from the plaintiff.

3. The defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.

[ *As in paras 4 and 5 of Form No. 1.* ]

6. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[*Pecuniary compensation may also be claimed.*]

---

No. 36.

## Injunction Restraining Nuisance.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows:—

1. Plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No......., ......Street.]

2. The defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street......].

3. On the......day of......11..., the defendant erected upon his said plot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff].

[4. In consequence the plaintiff has been compelled to abandon the said house, and has been unable to rent the same.]

[*As in paras 4 and 5 of Form No. 1.*]

7. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further nuisance.

---

No. 37.

## Public Nuisance.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows:—

1. The defendant has wrongly heaped up earth and stones on a public road known as......Street at......so as to obstruct the passage of the public along the same and threatens and intends, unless restrained from so doing, to continue and repeat the said wrongful act.

2. The plaintiff has obtained the consent in writing of the Dewan [or of the Division Peishkar or other Officer appointed in this behalf] to the institution of this suit.

[*As in paras 4 and 5 of Form No. 1.*]

5. The plaintiff claims—

(1) a declaration that the defendant is not entitled to obstruct the passage of the public along the said public road;

(2) an injunction restraining the defendant from obstructing the passage of the public along the said public road and directing the defendant to remove the earth and stones wrongfully heaped up as aforesaid.

---

No. 38.

**Injunction against the Diversion of a Water-course.**

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

*[As in Form No. 27.]*

The plaintiff claims that the defendant be restrained by injunction from diverting the water as aforesaid.

---

No. 39.

**Restoration of movable Property threatened with destruction and for an Injunction.**

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. Plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grandfather which was executed by an eminent painter], and of which no duplicate exists [ *or state any facts showing that the property is of a kind that cannot be replaced by money* .]

2. On the......day of......11.., he deposited the same for safe-keeping with the defendant.

3. On the......day of......11..., he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.

4. The defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, cut or injure the same if required to deliver it up.

5. No pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the [ painting ].

***[As in paras 4 and 5 of Form No. 1.]***

8. The plaintiff claims—

(1) that the defendant be restrained by injunction from disposing of, injuring or concealing the said [ painting ];

(2) that he be compelled to deliver the same to the plaintiff.

---

No. 40.

**Interpleader.**

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. Before the date of the claims hereinafter mentioned *G. H.* deposited with the plaintiff [*describe the property*] for [safekeeping].

2. The defendant *C. D.* claims the same [under an alleged assignment thereof to him from *G. H.*]

3. The defendant *E. F.* also claims the same [under an order of *G. H.* transferring the same to him].

4. The plaintiff is ignorant of the respective rights of the defendants.

5. He has no claim upon the said property other than for charges and costs, and is ready and willing to deliver it to such persons as the Court shall direct.

6. The suit is not brought by collusion with either of the defendants.

[*As in paras 4 and 5 of Form No. 1.*]

9. The plaintiff claims—

(1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto;

(2) that they be required to interplead together concerning their claims to the said property ;

[(3) that some person be authorised to receive the said property pending such litigation ;]

(4) that upon delivering the same to such [person] the plaintiff be discharged from all liability to either of the defendants in relation thereto.

---

No. 41.

**Administration by Creditor on behalf of himself and all other Creditors.**

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. *E. F.*, late of . ..., was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of......

[*Here insert nature of debt and security, if any*].

2. *E. F.* died on or about the . ...day of...... . By his last will, dated the......day of......, he appointed *C. D.* his executor [*or* devised his estate in trust, etc., *or* died intestate, *as the case may be*].

3. The will was proved by *C. D.* [*or* letters of administration were granted, etc.]

4. The defendant has possessed himself of the movable [and immovable, *or* the proceeds of the immovable] property of *E. F.*, and has not paid the plaintiff his debt.

[*As in paras 4 and 5 of Form No. 1.*]

7. The plaintiff claims that an account may be taken of the movable [and immovable] property of *E. F.*, deceased, and that the same may be administered under the decree of the Court.

---

No. 42.

## Administration by Specific Legatee.

(*Title.*)

[*Alter Form No. 41 thus*]—

[*Omit paragraph 1 and commence paragraph 2*] *E. F.*, late of......, died on or about the......day of...... . By his last will, dated the......day of ......he appointed *C. D.* his executor, and bequeated to the plaintiff [*here state the specific legacy.*]

*For paragraph 4 substitute*—

The defendant is in possession of the movable property of *E. F.*, and amongst other things, of the said [*here name the subject of the specific bequest.*]

*For the commencement of paragraph 7 substitute*—

The plaintiff claims that the defendant may be ordered to deliver to him the said [*here name the subject of the specific bequest*] or that, etc.

---

No. 43.

## Administration by Pecuniary Legatee.

*(Title.)*

[ *Alter Form No. 41 thus* ]—

[*Omit paragraph 1 and substitute for paragraph 2*] *E. F.*, late of......, died on or about the.. ...day of...... . By his last will, dated the..... day of ......he appointed *C. D.* his executor, and bequeathed to the plaintiff a legacy of......rupees.

*In paragraph 4, substitute* "legacy" *for* "debt."

*Another form.*

*(Title.)*

*E. F.*, the above named plaintiff, states as follows :—

1. *A. B.* of *K.* in the......died on the......day of...... . By his last will, dated the......day of......, he appointed the defendant and *M. N.* [who died in the testator's lifetime ] his executors, and bequeathed his property, whether movable or immovable, to his executors in trust, to pay the rents and income thereof to the plaintiff for his life ; and after his decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his immovable property for the person who would be the testator's heir-at-law, and as to his movable property for the persons who would be the testator's next-of kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The will was proved by the defendant on the......day of...... . The plaintiff has not been married.

3. The testator was at his death entitled to movable and immovable property ; the defendant entered into the receipt of the rents of the immovable property and got in the movable property ; he has sold some part of the immovable property.

[*As in paras 4 and 5 of Form No. 1.*]

6. The plaintiff claims—

(1) to have the movable and immovable property of *A. B.* administered in this Court, and for that purpose to have all proper directions given and accounts taken ;

(2) such further or other relief as the nature of the case may require.

No. 44.

## Execution of Trusts.

*(Title.)*

*A. B.*, the above named plaintiff, states as follows :—

1. He is one of the trustees under an instrument of settlement bearing date on or about the......day of......made upon the marriage of *E. F.* and *G. H.*, the father and mother of the defendant [*or* an instrument of transfer of the estate and effects of *E. F.* for the benefit of *C. D.*, the defendant, and the other creditors of *E. F.* ]

2. *A. B.* has taken upon himself the burden of the said trust, and is in possession of [*or* of the proceeds of] the movable and immovable property transferred by the said instrument.

3. *C. D.* claims to be entit ed to a beneficial interest under the instrument.

*[As in paras 4 and 5 of Form No. 1.]*

6. The plaintiff is desirous to account for all the rents and profits of the said immovable property [and the proceeds of the sale of the said, *or* of part of the said, immovable property, *or* movable, *or* the proceeds of the sale of, or of part of, the said movable property, *or* the profits accruing to the plaintiff as such trustee in the execution of the said trust]; and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust estate may be administered in the Court for the benefit of *C. D.*, the defendant and all other persons who may be interested in such administration, in the presence of *C. D.* and such other persons so interested as the Court may direct, or that *C. D.* may show good cause to the contrary.

*[N. B.—Where the suit is by a beneficiary, the plaint may be modelled mutatis mutandis on the plaint by a legatee.]*

---

No. 45.

## Foreclosure or Sale.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. The plaintiff is mortgagee of lands belonging to the defendant.

2. The following are the particulars of the mortgage :—

   (*a*) (date) ;

   (*b*) (names of mortgagor and mortgagee);

(*c*) (sum secured);

(*d*) (rate of interest);

(*e*) (property subject to mortgage);

(*f*) (amount now due);

(*g*) (*if the plaintiff's title is derivative, state shortly the transfers or devolution under which hs claims*).

(*If the plaintiff is mortgagee in possession, add*)

3. The plaintiff took possession of the mortgaged property on the...... day of and is ready to account as mortgagee in possession from that time.

[*As in paras, 4 and 5 of Form No. 1.*]

6. The plaintiff claims payment from the defendant and by sale of the property.

---

No. 46.

**Redemption.**

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows:—

1. The plaintiff is mortgagor of lands of which the defendant is mortgagee.

2. The following are the particulars of the mortgage :—

(*a*) (date);

(*b*) (names of mortgagor and mortgagee );

(*c*) (sum secured );

(*d*) (rate of interest);

(*e*) (property subject to mortgage);

(*f*) (*if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims*).

(*If the defendant is mortgagee in possession, add*)

3. The defendant has taken possession [*or* has received the rents ] of the mortgaged property.

[*As in paras 4 and 5 of Form No. 1.*]

6. The plaintiff claims to redeem the said property and to have the same reconveyed to him [and to have possession thereof. ]

---

No. 47.

## Specific Performance (No. 1.)

*(Title.)*

*A. B.*, the above named plaintiff, states as follows :—

1. By an agreement dated the......day of......and signed by the defendant, he contracted to buy of [*or* sell to ] the plaintiff certain immovable property therein described and referred to, for the sum of......rupees.

2. The plaintiff has applied to the defendant specifically to perform the agreement on his part, but the defendant has not done so.

3. The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice.

*[As in paras 4 and 5 of Form No. 1.]*

6. The plaintiff claims that the Court will order the defendant specifically to perform the agreement and to do all acts necessary to put the plaintiff in full possession of the said property [*or* to accept a transfer and possession of the said property ] and to pay the costs of the suit.

---

No. 48.

## Specific Performance (No. 2.)

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. On the......day of......11..., the plaintiff and defendant entered into an agreement, in writing, and the original document is hereto annexed.

The defendant was absolutely entitled to the immovable property described in the agreement.

2. On the......day of......11..., the plaintiff tendered......rupees to the defendant, and demanded a transfer of the said property by a sufficient instrument.

3. On the......day of . . 11..., the plaintiff again demanded such transfer. [*Or* the defendant refused to transfer the same to the plaintiff.]

4. The defendant has not executed any instrument of transfer.

5. The plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

*[As in paras 4 and 5 of Form No. 1.]*

8. The plaintiff claims:—

(1) that the defendant transfers the said property to the plaintiff by a sufficient instrument [*following the terms of the agreement*].

(2) ......rupees compensation for withholding the same.

---

No. 49.

**Partnership.**

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. He and *C. D.*, the defendant have been for......years [*or* months] past carrying on business together under articles of partnership in writing [*or* under a deed, *or* under a verbal agreement ].

2. Several disputes and differences have arisen between the plaintiff and defendant as such partners whereby it has become impossible to carry on the business in partnership with advantage to the partners, [*Or* the defendant has committed the following breaches of the partnership articles :—

(1)

(2)

(3) ]

[*As in paras 4 and 5 of Form No. 1.*]

5. The plaintiff claims—

(1) dissolution of the partnership ;

(2) that accounts be taken ;

(3) that a receiver be appointed.

*N. B.—In suits for the winding-up of any partnership, omit the claim for dissolution and instead insert a paragraph stating the facts of the partnership having been dissolved.)*

---

(4) Written Statements.

*General defences.*

Denial. The defendant denies that (*set out facts*).

The defendant does not admit that (*set out facts*).

The defendant admits that...but says that......

Protest.

The defendant denies that he is a partner in the defendant firm of......

The defendant denies that he made the contract alleged or any contract with the plaintiff.

The defendant denies that he contracted with the plaintiff as alleged or at all.

The defendant admits assets but not the plaintiff's claim.

The defendant denies that the plaintiff sold to him the goods mentioned in the plaint or any of them.

Limitation.

The suit is barred by article......or article......of the Second Schedule to the Limitation Regulation of 1100.

Jurisdiction.

The Court has no jurisdiction to hear the suit on the ground that (*set forth the grounds*).

On the .....day of......a diamond ring was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action.

Insolvency.

The defendant has been adjudged an insolvent.

The plaintiff before the institution of the suit was adjudged an insolvent and the right to sue vested in the receiver.

Minority.

The defendant was a minor at the time of making the alleged contract.

Payment into Court.

The defendant as to the whole claim (*or* as to Rs...... part of the money claimed, *or as the case may be*) has paid into Court Rs .....and says that this sum is enough to satisfy the plaintiff's claim (or the part aforesaid).

Performance remitted.

The performance of the promise alleged was remitted on the......(*date*).

Rescission.

The contract was rescinded by agreement between the plaintiff and defendant.

*Res Judicata.*

The plaintiff's claim is barred by the decree in suit (*give the reference*).

Estoppel.

The plaintiff is estopped from denying the truth of (*insert statement as to which estoppel is claimed*) because (*here state the facts relied on as creating the estoppel*).

Ground of defence subsequent to institution of suit.

Since the institution of the suit, that is to say on the .. day of......(*set out facts*).

No. 1.

**Defence in suits for Goods sold and delivered.**

1. The defendant did not order the goods.

2. The goods were not delivered to the defendant.

3. The price was not Rs......

[*or*]

| | | | |
|---|---|---|---|
| 4.<br>5.<br>6. | Except as to Rs. ...... | same as | 1.<br>2.<br>3. |

7. The defendant [*or A. B.*, the defendant's agent] satisfied the claim by payment before suit to the plaintiff [*or* to *C. D.*, the plaintiff's agent] on the......day of......11... .

8. The defendant satisfied the claim by payment after suit to the plaintiff on the......day of......11... .

No. 2.

**Defence in Suits on bonds**

1. The bond is not the defendant's bond.

2. The defendant made payment to the plaintiff on the day according to the condition of the bond.

3. The defendant made payment to the plaintiff after the day named and before suit of the principal and interest mentioned in the bond.

No. 3.

**Defence in Suits on Guarantees.**

1. The principal satisfied the claim by payment before suit.

2. The defendant was released by the plaintiff giving time to the principal debtor in pursuance of a binding agreement.

No. 4.

## Defence in any Suit for Debt.

1. As to Rs. 200 of the money claimed, the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff.

Particulars are as follows :—

| | | Rs. |
|---|---|---|
| 1094, Chingom 29th | ... | 150 |
| ,, Kanni 1st | ... | 50 |
| | Total | 200 |

2. As to the whole [*or* as to Rs. ....., part of the money claimed] the defendant made tender before suit of Rs.......and has paid the same into Court.

No. 5.

## Defence in suits for injuries caused by negligent driving.

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, and that it was under the charge or control of the defendant's servants. The carriage belonged to .....of......Street, livery stable keepers employed by the defendant to supply him with carriages and and horses ; and the person under whose charge and control the said carriage was, was the servant of the said......

2. The defendant does not admit that the said carriage was turned out of [B] Street either negligently, suddenly or without warning, or at a rapid or dangerous pace.

3. The defendant says the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. The defendant does not admit the statements contained in the 3rd paragraph of the plaint.

No. 6.

## Defence in all suits for wrongs.

1. Denial of the several acts [*or* matters] complained of

No. 7.

**Defence in suits for detention of goods.**

1. The goods were not the property of the plaintiff.

2. The goods were detained for a lien to which the defendant was entitled.

Particulars are as follows :—

1094, Medam 3rd. To carriage of the goods claimed from Trivandrum to Quilon.—45 maunds at Rs. 2 per maund......Rs. 90.

---

No. 8.

**Defence in suits for infringement of copyright.**

1. The plaintiff is not the author [*assignee, etc.*].
2. The book was not registered.
3. The defendant did not infringe.

---

No. 9.

**Defence in suits for infringement of trade mark.**

1. The trade mark is not the plaintiff's.
2. The alleged trade mark is not a trade mark.
3. The defendant did not infringe.

---

No. 10.

**Defences in suits relating to nuisances.**

1. The plaintiff's lights are not ancient [*or* deny his other alleged prescriptive rights.]

2. The plaintiff's lights will not be materially interfered with by the defendant's buildings.

3. The defendant denies that he or his servants pollute the water [*or* do what is complained of.]

[*If the defendant claims the right by prescription or otherwise to do what is complained of, he must say so, and must state the grounds of the claim, i. e., whether by prescription, grant or what.*]

4. The plaintiff has been guilty of laches of which the following are particulars:—

1070. Plaintiff's mill began to work.

1071. Plaintiff came into possession.

1083. First complaint.

5. As to the plaintiff's claim for damages the defendant will rely on the above grounds of defence and says that the acts complained of have not produced any damage to the plaintiff. [*If other grounds are relied on, they must be stated e. g., limitation as to past damage.*]

---

No. 11.

**Defence to suit for sale.**

1. The defendant did not execute the mortgage.

2. The mortgage was not transferred to the plaintiff (*if more than one transfer is alleged, say which is denied*).

3. The suit is barred by article...... of the Second Schedule to the Limitation Regulation, of 1062.

4. The following payments have been made, *viz*:—

| | | Rs. |
|---|---|---|
| (*Insert date.*) ____________, | ... | 1,000 |
| (*Insert date.*) ____________ | ... | 500 |

5. The plaintiff took possession on the......of ....., and has received the rents ever since.

6. The plaintiff released the debt on the......of......

7. The defendant transferred all his interest to *A. B.* by a document, dated......

---

No. 12.

**Defence to suit for redemption.**

1. The plaintiff's right to redeem is barred by article.........of the Second Schedule to the Limitation Regulation, .....of 1062.

2. The plaintiff transferred all interest in the property to *A. B.*

3. The defendant, by a document dated the......day of......transferred all his interest in the mortgage-debt and property comprised in the mortgage to *A. B.*

4. The defendant never took possession of the mortgaged property, or received the rents thereof.

[*If the defendant admits possession for a time only, he should state the time, and deny possession beyond what he admits.*]

---

No. 13.

### Defence to suit for specific performance.

1. The defendant did not enter into the agreement.

2. *A. B.* was not the agent of the defendant *(if alleged by plaintiff)*.

3. The plaintiff has not performed the following conditions—*Conditions)*.

4. The defendant did not—*(alleged acts of part performance)*.

5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matter—*(State why)*.

6. The agreement is uncertain in the following respects—*(State them)*.

7. *(or)* The plaintiff has been guilty of delay.

8. *(or)* The plaintiff has been guilty of fraud *(or* misrepresentation).

9. *(or)* The agreement is unfair.

10. *(or)* The agreement was entered into by mistake.

11. The following are particulars of (7), (8), (9), (10) *(or as the case may be)*.

12. The agreement was rescinded under Conditions of sale, No. 11 *(or* by mutual agreement).

*(In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on, e. g., the Limitation Regulation, accord and satisfaction, release, fraud, etc.)*

---

No. 14.

### Defence in Administration suit by Pecuniary Legatee.

1. *A. B's* will contained a charge of debts; he died insolvent; he was entitled at his death to some immovable property which the defendant sold and which produced the net sum of Rs......... and the testator had some movable property which the defendant got in, and which produced the net sum of Rs.........

2. The defendant applied the whole of the said sums and the sum of Rs.......which the defendant received from rents of the immovable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.

3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the..... day of......11..., and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

4. The defendant submits that the plaintiff ought to pay the costs of his suit.

No. 15.

**Probate of will in solemn form.**

1. The said will and codicil of the deceased were not duly executed according to the provisions of

2. The deceased at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory and understanding.

3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him whose names are at present unknown to the defendant.]

4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud so far as is within the defendant's present knowledge, being [*state the nature of the fraud.*]

5. The deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof [*or* of the contents of the residuary clause in the said will, *as the case may be.*]

6. The deceased made his true last will, dated the 1st Chingam, 1073, and thereby appointed the defendant sole executor thereof.

The defendant claims—

(1) that the Court will pronounce against the said will and codicil propounded by the plaintiff;

(2) that the Court will decree probate of the will of the deceased, dated the 1st Chingam, 1073, in solemn form of law.

No. 16.

**Particulars. (Or. 6, r. 5.)**

*(Title of suit.)*

Particulars.

The following are the particulars of (*here state the matters in respect of which particulars have been ordered*) delivered pursuant to the order of the......of......

*(Here set out the particulars ordered in paragraphs if necessary.)*

# APPENDIX B.

## PROCESS.

No. 1.

### Summons for disposal of suit. (Or. 5, rr. 1, 5.)

*(Title.)*

To

[*Name, description and place of residence.*]

WHEREAS......has instituted a suit against you for......you are hereby summoned to appear in this Court in person or by a pleader duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some person able to answer all such questions, on the...... day of......11..., at...o'clock in the......noon, to answer the claim; and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce on that day all the witnesses upon whose evidence and all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

Given under my hand and the seal of the Court, this......day of...... 11....

*Judge.*

NOTICE.—1. Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court and on depositing the necessary expenses.

2. If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both.

No. 2.

**Summons for Settlement of Issues.** (Or. 5, rr. 1, 5.)

*(Title.)*

To

[*Name, description and place of residence.*]

WHEREAS..... has instituted a suit against you for......you are hereby summoned, to appear in this Court in person, or by a pleader duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some person able to answer all such questions, on the..... day of......11..., at...o'clock in the .... noon, to answer the claim; and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

Given under my hand and the seal of the Court, this......day of...... 11....

*Judge.*

NOTICE.—1. Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call on the witness to produce, on applying to the Court and on depositing the necessary expenses.

2. If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both.

---

No. 3.

**Summons to appear in person.** (Or. 5, r. 3.)

*(Title.)*

To

[*Name, description and place of residence*.]

WHEREAS......has instituted a suit against you for......you are hereby summoned to appear in this Court in person on the......day of......11..., at... o'clock in the......noon, to answer the claim; and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

Given under my hand and the seal of the Court, this ...day of......11....

*Judge.*

No. 4.

**Notice to Person who, the Court considers, should be added as Co-plaintiff. (Or. 1, r. 10.)**

*(Title.)*

To

[*Name, description and place of residence.*]

WHEREAS......has instituted the above suit against ....for......and whereas it appears necessary that you should be added as a plaintiff in the said suit in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved :

Take notice that you should on or before the ...day of......11...signify to this Court whether you consent to be so added.

Given under my hand and the seal of the Court, this......day of......11....

*Judge.*

No. 5.

**Summons to legal representative of a deceased defendant. (Or. 22, r. 4).**

*(Title.)*

To

Whereas the plaintiff......instituted a suit in this Court on the......day of......11..., against the defendant......who has since deceased, and whereas the said plaintiff has made an application to this Court alleging that you are the legal representative of the said......, deceased, and desiring that you be made the defendant in his stead :

You are hereby summoned to attend in this Court on the......day of ......11......at......A. M. to defend the said suit and, in default of your appearance on the day specified, the said suit will be heard and determined in your absence.

Given under my hand and the seal of the Court, this......day of......11...

*Judge.*

No. 6.

**Order for Transmission of summons for Service in the jurisdiction of another Court. (Or. 5, r. 21).**

*(Title.)*

Whereas it is stated that...... $\frac{\text{defendant}}{\text{witness}}$ in the above suit is at present residing in....... it is ordered that a summons returnable on the... ..day of... 11..., be forwarded to the......Court of......for service on the said $\frac{\text{defendant}}{\text{witness}}$ with a duplicate of this proceeding.

The Court-fee of......chargeable in respect to the summons has been realised in this Court in stamps. Dated......11...

*Judge.*

---

No. 7.

**Order for Transmission of Summons to be served on a Prisoner. (Or. 5, r. 23).**

*(Title.)*

To

The Superintendent of the Jail at......

Under the provisions of Order V, Rule 23, of the Code of Civil Procedure a summons in duplicate is herewith forwarded for service on the defendant .....who is......a prisoner in jail. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

*Judge.*

---

No. 8.

**Order for Transmission of Summons to be served on a Public Servant or Soldier. (Or. 5, rr. 25, 26).**

*(Title.)*

To

Under the provisions of Order V, Rule 25 (*or 26, as the case may be*), of the Code of Civil Procedure, a summons in duplicate is herewith forwarded for service on the defendant......who is stated to be serving under you. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

*Judge.*

---

No. 9.

**To accompany Returns of summons of another Court (Or. 5, r. 22).**

*(Title.)*

Read proceeding from the .....forwarding .....for service on..... in Suit No......of 11...of that Court.

Read Serving Officer's endorsement stating that the......and proof of the above having been duly taken by me on the oath of . and .. it is ordered that the......be returned to the......with a copy of this proceeding.

*Judge.*

NOTE—This form will be applicable to process other than summons, the service of which may have to be effected in the same manner.

---

No. 10.

**Affidavit of Process-server to Accompany return of a Summons or Notice** (Or. 5, r. 18.)

*(Title)*

The Affidavit of......son or anandaravan of......

I ...... $\frac{\text{make oath}}{\text{affirm}}$ and say as follows :—

(1) I am a process-server of this Court.

(2) On the......day of...... 11...I received a $\frac{\text{summons}}{\text{notice}}$ issued by the Court of.........in Suit No.......of 11... ..in the said Court, dated the...... day of......11...for service on......

(3) The said......was at the time personally known to me, and I served the said $\frac{\text{summons}}{\text{notice}}$ on $\frac{\text{him}}{\text{her}}$ on the......day of......11...at about ......... o'clock in the......noon a......by tendernig a copy thereof to $\frac{\text{him}}{\text{her}}$ and requiring $\frac{\text{him}}{\text{her}}$ signature to the original $\frac{\text{summons}}{\text{notice}}$

(*a*) ............

(*b*) ............

(*a*) Here state whether the person served signed or refused to sign the process, and in whose presence.

(*b*) Signature of process-server.

or,

(3) The said.................... not being personally known to me accompanied me to......... and pointed out to me a person whom he stated to be the said..........., and I served the said $\frac{\text{summons}}{\text{notice}}$ on $\frac{\text{him}}{\text{her}}$ on the......day of......11..., at about......o'clock in the......noon at......by tendering a copy thereof to $\frac{\text{him}}{\text{her}}$ and requiring $\frac{\text{his}}{\text{her}}$ signature to the original $\frac{\text{summons}}{\text{notice}}$

(a) ...........

(b) ............

(a) Here state whether the person served signed or refused to sign the process and in whose presence.

(b) Signature of process-server.

or,

(3) The said......and the house in which he ordinarily resides being personally known to me, I went to the said house in......and there on the.....day of......11..., at about..... o'clock in the......noon, I did not find the said......

(a) ............

(b) ............

(a) Enter fully and exactly the manner in which the process was served, with special reference to Order 5, rules 15 and 17.

(b) Signature of process-server.

or,

(3) One......accompanied me to......and there pointed out to me......which he said was the house in which......ordinarily resides. I did not find the said......there.

(a) ............

(b) ............

(a) Enter fully and exactly the manner in which the process was served, with special reference to Order 5, Rules 15 and 17.

(b) Signature of process-server.

or,

*If substituted service has been ordered, state fully and exactly the manner in which the summons was served with special reference to the terms of the order for substituted service.*

Sworn/Affirmed by the said......before me this......day of......11.... .

*Empowered under Section 103 of the Code of Civil Procedure, to administer the oath to deponents.*

---

No. 11.

**Notice to defendant. (Or. 9, r. 6.)**

*(Title.)*

To

*(Name, description and place of residence.)*

WHEREAS this day was fixed for the hearing of the above suit and a summons was issued to you and the plaintiff has appeared in this Court and you did not so appear, but from the return to the Nazir it has been proved to the satisfaction of the Court that the said summons was served on you but not in sufficient time to enable you to appear and answer on the day fixed in the said summons;

Notice is hereby given to you that the hearing of the suit is adjourned this day and that the......day of......11..... is now fixed for the hearing of the same; in default of your appearance on the day last mentioned the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this......day of...... 11......

*Judge.*

---

No. 12.

**Summons to Witness. (Or. 16, rr. 1, 5.)**

*(Title.)*

To

WHEREAS your attendance is required to........ on behalf of the......... in the above suit, you are hereby required [personally] to appear before this Court on the..... day of . ...11......, o'clock in the forenoon, and to bring with you [*or* to send to this......Court.]

A sum of Rs........, being your travelling and other expenses and subsistence allowance for one day, is herewith sent. If you fail to comply with this order without lawful excuse, you will be subject to the consequences of non-attendance laid down in Rule 12 of Order XVI of the Code of Civil Procedure.

GIVEN under my hand and the seal of the Court, this......day of...... 11.........

*Judge.*

NOTICE.—(1) If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid;

(2) If you are detained beyond the day aforesaid, a sum of Rs. ......will be tendered to you for each day's attendance beyond the day specified.

No. 13.

**Proclamation requiring attendance of Witness.**

**(Or. 16, r. 10.)**

*(Title.)*

To

WHEREAS it appears from the examination on oath of the serving officer that the summons could not be served upon the witness in the manner prescribed by law; and whereas it appears that the evidence of the witness is material, and he absconds and keeps out of the way for the purpose of evading the service of the summons: This proclamation is therefore, under Rule 10 of Order XVI of the Code of Civil Procedure, issued requiring the attendance of the witness in this Court on the...... day of......11 ....., at...... o'clock in the forenoon and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of the Court, this......day of...... 11......

*Judge.*

No. 14.

**Proclamation requiring attendance of Witness.**

**(Or. 16, r. 10.)**

*(Title.)*

To

WHEREAS it appears from the examination on oath of the serving officer that the summons has been duly served upon the witness, and whereas

it appears that the evidence of the witness is material and he has failed to attend in compliance with such summons: This proclamation is therefore, under Rule 10 of Or. XVI of the Code of Civil Procedure, issued, requiring the attendance of the witness in this Court on the......day of......11......at ......o'clock in the forenoon, and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of this Court, this......day of...... 11......

*Judge.*

---

No. 15.

**Warrant of Attachment of Property of Witness.**

**(Or. 16, r. 10.)**

***(Title).***

To

The Amin of the Court.

WHEREAS the witness.........cited by.........has not, after the expiration of the period limited in the proclamation issued for his attendance, appeared in Court; You are hereby directed to hold under attachment........ property belonging to the said witness to the value of......and to submit a return, accompanied with an inventory thereof, within......days......

GIVEN under my hand and the seal of the Court, this......day of........ 11...

*Judge.*

---

No. 16.

**Warrant of Arrest of Witness. (Or. 16, r. 10).**

*(Title.)*

To

The......of the Court.

WHEREAS......has been duly served with a summons but has failed to attend [absconds and keeps out of the way for the purpose of avoiding service of a summons]; You are hereby ordered to arrest and bring the said ......before the Court.

You are further ordered to return this warrant on or before the...... day of......11......with an endorsement certifying the day on and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this......day of......... 11......

*Judge.*

---

### No. 17.

### Warrant of Committal. (Or. 16, r. 16.)

*(Title.)*

To

The Officer in charge of the Jail at............

WHEREAS the plaintiff (*or* defendant) in the above-named suit has made application to this Court that security be taken for the appearance of ......to give......evidence (*or* to produce a document) on the......day of...... 11..., and whereas the Court has called upon the said......to furnish such security, which he has failed to do: This is to require you to receive the said ......into your custody in the civil prison and to produce him before this Court at......on the said day and on such other day or days as may be hereafter ordered.

GIVEN under my hand and the seal of the Court, this......day of...... 11......

*Judge.*

---

### No. 18.

### Warrant of Committal. (Or. 16, r. 18.)

*(Title).*

To

The Officer in charge of the Jail at.........

WHEREAS .. .., whose attendance is required before this Court in the above-named case to give evidence (*or* to produce a document), has been arrested and brought before the Court in custody; and whereas owing to the absence of the plaintiff (*or* defendant), the said......cannot give such evidence (*or* produce such document); and whereas the Court has called upon the said......to give security for his appearance on the......day of......11......, at ......which he has failed to do: This is to require you to receive the said...... into your custody in the civil prison and to produce him before this Court at ......on the......day of......11......

GIVEN under my hand and the seal of the Court, this......day of...... 11...

*Judge.*

# APPENDIX C.

## DISCOVERY, INSPECTION AND ADMISSION.

No. 1.

### Order for Delivery of Interrogatories. (Or. 11, r. 1.)

In the Court of......

Civil Suit No.......of......11......

*A. B.* ... ... *Plaintiff*,

*against*

*C. D.*, *E. F.* and *G. H.* ... ... *Defendants*.

Upon hearing......and upon reading the affidavit of......filed the...... day of...... 11...; It is ordered that the......be at liberty to deliver to the ... interrogatories in writing, and that the said ...do answer the interrogatories as prescribed by Order XI, Rule 8, and that the costs of this application be....

No. 2.

### Interrogatories. (Or. 11, r. 4.)

(*Title as in No. 1, Supra.*)

Interrogatories on behalf of the above-named [*Plaintiff or defendant C. D.*] for the examination of the above-named [*defendants E. F. and G. H. or plaintiff.*]

1. Did not, etc.,
2. Has not, etc.,

etc., etc., etc.

[*The defendant E. F., is required to answer the interrogatories numbered....*]

[*The defendant G. H. is required to answer the interrogatories numbered....*]

No. 3.

### Answer to Interrogatories. (Or. 11, r. 9.)

(*Title as in No. 1, Supra.*)

The answer of the above-named defendant *E. F.* to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named *E. F.*, make oath and say as follows :—

1. } Enter answers to interrogatories in paragraphs numbered con-
2. } secutively.

3. I object to answer the interrogatories numbered on the ground that [*state grounds of objection.*]

---

No. 4.

**Order for Affidavit as to Documents. (Or. 11, r. 12.)**

*(Title as in No. 1, Supra.)*

Upon hearing......It is ordered that the......do within......days from the date of this order, answer on affidavit stating which documents are or have been in his possession or power relating to the matter in question in this suit, and that the costs of this application be......

---

No. 5.

**Affidavit as to Documents. (Or. 11, r. 13.)**

*(Title as in No. 1, Supra.)*

I, the above-named defendant *C. D.*, make oath and say as follows:—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the first schedule hereto [*state grounds of objection.*]

3. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

4. The last-mentioned documents were last in my possession or power on [*state when and what has become of them, and in whose possession they now are.*]

5. According to the best of my knowledge, information and belief, I have not now, and never had, in my possession, custody or power, or in the possession, custody or power of my pleader or agent, or in the possession, custody or power of any other person on my behalf, any account, book of

account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit or any of them, or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the said first and second schedules hereto.

---

No. 6.

**Order to produce Documents for Inspection (Or. 11, r. 14.)**

*(Title as in No. 1, Supra.)*

Upon hearing......and upon reading the affidavit of......filed the...... day of......11...; It is ordered that the..... do, at all reasonable times, on reasonable notice, produce at... . ,situate at......, the following documents namely......, and that the......be at liberty to inspect and peruse the documents so produced, and to make notes of their contents. In the meantime it is ordered that all further proceedings be stayed and that the costs of this application be....

---

No. 7.

**Notice to produce Documents. (Or. 11, r. 16.)**

*(Title as in No. 1, Supra.)*

Take notice that the *(plaintiff or defendant)* requires you to produce for his inspection the following documents referred to in your [plaint *or* written statement *or* affidavit dated the......day of......11...]

[*Describe documents required.*]

*X. Y. Pleader for the......*

To Z., pleader for the......

---

No. 8.

**Notice to inspect Documents. (Or. 11, r. 17.)**

*(Title as in No. 1, Supra.)*

Take notice that you can inspect the documents mentioned in your notice of the......day of......11...[*except the documents numbered......in that notice*] at [*insert place of inspection*] on Thursday next, the......instant, between the hours of 12 and 4 o'clock.

*Or*, that the [*plaintiff or defendant*] objects to giving you inspection of documents mentioned in your notice of the day of . . . 11...on the ground that [*state the ground*]—

---

No. 9.

**Notice to admit Documents. (Or. 12, r. 3.)**

(*Title as in No. I, Supra.*)

Take notice that plaintiff [*or* defendant] in this suit proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [*or* plaintiff], his pleader or agent, at...... on......between the hours of......; and the defendant [or plaintiff] is hereby required within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent or delivered were so served, sent or delivered, respectively, saving all just exceptions to the admissibility of all such documents as evidence in this suit.

G. H., *pleader* [*or agent*] *for plaintiff* [*or defendant*]

To E. F, *pleader* [*or agent*] *for defendant* [*or plaintiff* ].

[*Here describe the documents and specify as to each document whether it is original or a copy.*]

---

No. 10.

**Notice to admit Facts. (Or. 12, r. 5.)**

(*Title as in No. 1, Supra.*)

Take notice that the plaintiff [or defendant] in this suit requires the defendant [*or* plaintiff] to admit, for the purposes of this suit only, the several facts respectively hereunder specified; and the defendant [*or* plaintiff] is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this suit.

G. H., *pleader* [*or agent*] *for plaintiff* [*or defendant*].

To E. F., *pleader* [*or agent*] *for defendant* [or *plaintiff*].

The facts, the admission of which is required, are—

1. That M. died on the 1st Chingam, 1090.
2. That he died intestate.
3. That N. was his only lawful son.
4. That O. died on the 1st Kanni, 1096.
5. That O. was never married.

---

No. 11.

## Admission of facts pursuant to Notice. (Or. 12. r. 5.)

*(Title as in No. 1, Supra.)*

The defendant [*or* plaintiff] in this suit, for the purposes of this suit only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence in this suit :

Provided that this admission is made for the purposes of this suit only, and is not an admission to be used against the defendant [*or* plaintiff] on any other occasion or by any one other than the plaintiff [*or* defendant, *or* party requiring the admission].

E. F., *pleader* [*or agent*] *for defendant* [*or plaintiff*]. To G. H., *pleader* [*or agent*] *for plaintiff* [*or defendant*].

| Facts admitted. | Qualifications or limitations, if any, subject to which they are admitted. |
|---|---|
| 1. That M. died on the 1st Chingam 1090. ... | 1. |
| 2. That he died intestate ... | 2. |
| 3. That N. was his lawful-son ... | 3. But not that he was his only lawful son. |
| 4. That O. died ... | 4. But not that he died on the 1st Kanni 1096. |
| 5. That O. was never married ... | 5. |

No. 12.

## Notice to Produce (General Form). (Or. 12, r. 8.)

*(Title as in No. 1, Supra.)*

Take notice that you are hereby required to produce and show to the Court at the first hearing of this suit all books, papers, letters, copies of letters and other writings and documents in your custody, possession or power, containing any entry, memorandum or minute relating to the matters in question in the suit, and particularly

G. H., *pleader* [*or agent*] *for plaintiff* [*or defendant*]

To E. F., *pleader* [*or agent*] *for defendant* [*or plaintiff*.]

# APPENDIX D

## DECREES.

No 1.

### Decree in Original Suit. (Or. 20, rr. 6, 7.)

*(Title.)*

Claim for... ..

This suit coming on this day for final disposal before.........in the presence of... . for the plaintiff and of......for the defendant, it is ordered and decreed that .... and that the sum of Rs.......be paid by the......to the... on account of the costs of this suit, with interest thereon at the rate of...... per cent. per annum from this date to date of realization.

GIVEN under my hand and the seal of the Court this .....day of...... 11... .

***Judge.***

*Costs of Suit.*

| Plaintiff. | Rs. | Ch. | C. | Defendant. | Rs. | Ch. | C. |
|---|---|---|---|---|---|---|---|
| 1. Stamp of plaint ... | | | | Stamp for power ... | | | |
| 2. Do. power ... | | | | Do. , petition ... | | | |
| 3. Do. exhibits ... | | | | Pleader's fee ... | | | |
| 4. Pleader's fee on Rs. ... | | | | Subsistence for witnesses ... | | | |
| 5. Subsistence for witnesses. ... | | | | Service of process ... | | | |
| 6. Commissioner's fee ... | | | | Commissioner's fee ... | | | |
| 7. Service of process ... | | | | | | | |
| Total ... | | | | Total ... | | | |

No. 2.

## Simple Money Decree. (Section 31.)

*(Title.)*

Claim for.........

This suit coming on this day for final disposal before.........in the presence of.........for the plaintiff and of.........for the defendant, it is ordered that the.........do pay to the......sum of Rs.........with interest thereon at the rate of......per cent. per annum from........., to the date of realization of the said sum and do also pay Rs.......the costs of this suit, with interest thereon at the rate of......per cent. per annum from this date to the date of realization.

Given under my hand and the seal of the Court, this day of......11...

*Judge.*

*Costs of Suit.*

| Plaintiff. | Rs. | Ch. | C. | Defendant. | Rs. | Ch. | C. |
|---|---|---|---|---|---|---|---|
| 1. Stamp for plaint ... | | | | Stamp for power .. | | | |
| 2. Do. power ... | | | | Do. petition ... | | | |
| 3. Do. exhibits ... | | | | Pleader's fee ... | | | |
| 4. Pleader's fee on Rs. ... | | | | Subsistence for witnesses ... | | | |
| 5. Subsistence for witnesses. ... | | | | Service of process ... | | | |
| 6. Commissioner's fee ... | | | | Commissioner's fee ... | | | |
| 7. Service of process ... | | | | | | | |
| Total. ... | | | | Total. ... | | | |

No. 3.

## Decree for sale of hypothecated property in default of payment.

*(Title.)*

This Court doth order and decree that the defendant do pay plaintiff Rs.......together with Rs....the interest on the principal amount of Rs......at ...per cent. per mensem from the date of plaint (.........) to the date of the

decree and with further interest on the said amount at......per cent. per mensem from the latter date up to the date of payment; and this Court doth further order that the defendant do pay to the plaintiff Rs.........for his costs in this Court; and this Court doth further order and decree that upon the defendant paying to the plaintiff or into Court on or before......... the principal, interest and costs as aforesaid, the plaintiff do deliver up to defendant or to such person as he may appoint in this behalf, all documents in his possession or power relating to the property hypothecated and described in the schedule hereunto annexed; and that in default of payment of the sums aforesaid on or before the date specified, the said hypothecated property or a sufficient portion thereof be sold and that the proceeds of such sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what shall be found due to the plaintiff for principal, interest and costs as aforesaid, and that the balance, if any, be paid to the defendant or other person entitled to receive it.

*(Here enter schedule of hypothecated property.)*

---

No. 4.

## Decree for Rectification of Instrument.

*(Title.)*

It is hereby declared that the......, dated the...day of......11...does not truly express the intention of the parties to such......

And it is decreed that the said......be rectified by......

---

No. 5.

## Decree to set aside a transfer in fraud of creditors.

*(Title.)*

It is hereby declared that the......, dated the......day of.......11..., and made between......and......, is void as against the plaintiff and all the other creditors, if any, of the defendant.

---

No. 6.

## Injunction against Private Nuisance.

*(Title.)*

Let the defendant......, his agents, servants and workmen, be perpetually restrained from burning, or causing to be burnt, any bricks on the

defendant's plot of land marked B in the annexed plan, so as to occasion a nuisance to the plaintiff as the owner or occupier of the dwelling-house and garden mentioned in the plaint as belonging to and being occupied by the plaintiff.

---

No. 7.

**Injunction against building higher than old level.**

*(Title.)*

Let the defendant......, his contractors, agents and workmen, be perpetually restrained from continuing to erect upon his premises in ......any house or building of a greater height than the buildings which formerly stood upon his said premises and which have been recently pulled down, so or in such manner as to darken, injure or obstruct such of the plaintiff's windows in his said premises as are ancient lights.

---

No. 8.

**Injunction restraining use of Private Road.**

*(Title.)*

Let the defendant......, his agents, servants and workmen, be perpetually restrained from using or permitting to be used any part of the lane at ......, the soil of which belongs to the plaintiff, as a carriage-way for the passage of carts, carriages or other vehicles, either going to or from the land marked B in the annexed plan or for any purpose whatsoever.

---

No. 9.

**Preliminary Decree in an Administration suit.**

*(Title.)*

It is ordered that the following accounts and inquiries be taken and made; that is to say—

*In creditor's suit—*

1. That an account be taken of what is due to the plaintiff and all the other creditors of the deceased.

*In suits by legatees—*

2. That an account be taken of the legacies given by the testator's will.

*In suits by next-of-kin*—

3. That an inquiry be made and account taken of what or of what share, if any, the plaintiff is entitled to as next-of-kin [*or* one of the next-of-kin] of the intestate.

[After the first paragraph, the decree will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, heirs-at-law and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit.]

4. An account of the funeral and testamentary expenses.

5. An account of the movable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

6. An inquiry what part (if any) of the movable property of the deceased is outstanding and undisposed of.

7. And it is further ordered that the defendant do, on or before the ......day of......next, pay into Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or for his use.

8. And that if the......* shall find it necessary for carrying out the objects of the suit to sell any part of the movable property of the deceased, that the same be sold accordingly and the proceeds paid into Court.

9. And that Mr. E. F. be receiver in the suit (*or* proceeding) and receive and get in all outstanding debts and outstanding movable property of the deceased, and pay the same into the hands of the......* (and shall give security by bond for the due performance of his duties to the amount of...... rupees.)

10. And it is further ordered that if the movable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say—

(*a*) an inquiry what immovable property the deceased was seized of or entitled to at the time of his death;

(*b*) an inquiry what are the incumbrances (if any) affecting the immovable property of the deceased or any part thereof;

*Here insert name of proper officer.

(c) an account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.

11. And that the immovable property of the deceased, or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale and subject to the incumbrances of such of them as shall not consent.

12. And it is ordered that G. H. shall have the conduct of the sale of the immovable property, and shall prepare the conditions and contracts of sale subject to the approval of the..... *and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.

13. And it is further ordered that, for the purpose of the inquiries hereinbefore directed, the......* shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the......* to give the most useful publicity to such inquiries.

14. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the......day of......, and that the......* do certify the result of the inquiries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the...... day of......

15. And, lastly, it is ordered that this suit [*or* proceeding] stand adjourned for making final decree to the......day of......

[Such part only of this decree is to be used as is applicable to the particular case.]

---

No. 10.

## Final Decree in an Administration suit by a Legatee.

*(Title.)*

1. In is ordered that the defendant......do, on or before the......day of......, pay into Court the sum of Rs......., the balance by the said certificate found to be due from the said defendant on account of the estate of......, the testator, and also the sum of Rs.......for interest, at the rate of Rs...... per cent., per annum, from the......day of......to the......day of......, amounting together to the sum of Rs.........

---

* Here insert name of proper officer.

2. Let the .....* of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs...... ordered to be paid into Court as aforesaid, as follows :—

(a) The costs of the plaintiff to Mr......., his Vakil [*or* pleader] *or* and the costs of the defendant to Mr....... , his Vakil [*or* pleader.]

(b) And (*if any debts are due*) with the residue of the said sum of Rs.......after payment of the plaintiff's and defendant's costs as aforesaid, let the sums, found to be owing to the several creditors mentioned in the......schedule to the certificate, of the......*, together with subsequent interest on such of the debts as bear interest, be paid ; and, after making such payments, let the amount coming to the several legatees mentioned in the......schedule, together with subsequent interest (to be verified as aforesaid), be paid to them.

3. And if there should then be any residue, let the same be paid to the residuary legatee.

---

No. 11.

## Preliminary Decree in an Administration suit by a Legatee, where an Executor is held personally liable for the payment of Legacies.

(*Title.*)

1. It is declared that the defendant is personally liable to pay the legacy of Rs.......bequeathed to the plaintiff ;

2. And it is ordered that an account be taken of what is due for principal and interest on the said legacy ;

3. And it is also ordered that the defendant do, within......weeks after the.........date of the certificate of the......*, pay to the plaintiff the amount of what the......* shall certify to be due for principal and interest ;

4. And it is ordered that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

---

*Here insert name of proper officer.

No. 12.

## Final decree in an Administration-suit by next-of-kin.

*(Title).*

1. Let the .....* of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs ..... the balance by the said certificate found to be due from the said defendant on account of the personal estate of *E. F.*, the intestate, within one week after the taxation of the said costs by the said......*, and let the defendant retain for her own use out of such sum her costs, when taxed.

2. And it is ordered that the residue of the said sum of Rs......, after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows :—

(*a*) Let the defendant, within one week after the taxation of the said costs by the...* as aforesaid, pay one-third share of the said residue to the plaintiffs *A. B.*, and *C. D.*, his wife, in her right as the sister and one of the next-of-kin of the said *E. F.*, the intestate.

(*b*) Let the defendant retain for her own use one other third share of the said residue, as the mother and one of the next-of-kin of the said *E, F.*, the intestate.

(*c*) And let the defendant, within one week after the taxation of the said costs by the...* as aforesaid, pay the remaining one-third share of the said residue to *G. H.*, as the brother and the other next-of-kin of the said *E. F.*, the intestate.

---

No. 13.

## Preliminary Decree in a suit for Dissolution of Partnership and the taking of Partnership Accounts.

*(Title.)*

It is declared that the proportionate shares of the parties in the partnership are as follows :—

It is declared that this parnership shall stand dissolved [or shall be deemed to have been dissolved] as from the......day of......, and it is ordered that the dissolution thereof as from that day be advertised in the . ... Gazette, etc.

* Here insert name of proper officer.

And it is ordered that .....be the receiver........ of the partnership-estate and effects in this suit and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken :—

1. An account of the credits, property and effects now belonging to the said partnership ;

2. An account of the debts and liabilities of the said partnership ;

3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the good-will of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the......* may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the......day of...... , and that the . ...* do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the......day of...

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the......day of ....

---

No. 14.

## Final Decree in a suit for Dissolution of Partnership and the taking of partnership accounts.

*(Title.)*

It is ordered that the fund now in Court, amounting to the sum of Rs.... be applied as follows :—

1. In payment of the debts due by the partnership set forth in the in the certificate of the .....* amounting in the whole to Rs.......

*Here insert name of proper officer.

2. In payment of the costs of all parties in this suit, amounting to Rs......

[*These costs must be ascertained before the decree is drawn up.*]

3. In payment of the sum of Rs......to the plaintiff as his share of the partnership-assets, of the sum of Rs......being the residue of the said sum of Rs......now in Court, to the defendant as his share of the partnership-assets.

[ *Or,* And that the remainder of the said sum of Rs......be paid to the said plaintiff (*or* defendant) in part payment of the sum of Rs......certified to be due to him in respect of the partnership-accounts.]

4. And that the defendant [*or* plaintiff] do on or before the......day of......pay to the plaintiff [*or* defendant] the sum of Rs......being the balance of the said sum of Rs......due to him, which will then remain due.

No. 15.

## Decree for Recovery of Land and Mesne Profits.

(*Title.*)

It is hereby decreed as follows :—

1. That the defendant do put the plaintiff in possession of the property specified in the schedule hereunto annexed.

2. That the defendant do pay to the plaintiff the sum of Rs......with interest thereon at the rate of.... per cent. per annum to the date of realisation on account of mesne profits which have accrued due prior to the institution of the suit.

*Or*

2. That an inquiry be made as to the amount of mesne profits which have accrued due prior to the institution of the suit.

3. That an inquiry be made as to the amount of mesne profits from the institution of the suit until [the delivery of possession to the decree-holder] [the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court] [the expiration of three years from the date of the decree].

*Schedule.*

# APPENDIX E.

## EXECUTION.

### No. 1.

**Notice to show cause why a payment or adjustment should not be recorded as certified. (Or. 21, r. 2.)**

*(Title.)*

To

Whereas in execution of the decree in the above-named suit......has applied to this Court that the sum of Rs. .....recoverable under the decree has been $\frac{\text{paid}}{\text{adjusted}}$ and should be recorded as certified, this is to give you notice that you are to appear before this Court on the......day of......11 ....., to show cause why the $\frac{\text{payment}}{\text{adjustment}}$ aforesaid should not be recorded as certified.

GIVEN under my hand and the seal of the Court, this..... day......11...

*Judge.*

### No. 2.

**Precept. (Section 39.)**

*(Title).*

Upon hearing the decree-holder it is ordered that this precept be sent to the Court of......at......under Section 39 of the Code of Civil Procedure, with directions to attach the property specified in the annexed schedule and to hold the same pending any application which may be made by the decree-holder for execution of the decree.

*Schedule.*

Dated the......day of......11...

*Judge.*

### No. 3.

**Order sending Decree for Execution to another Court. (Or. 21, r. 5.)**

*(Title.)*

Whereas the decree-holder in the above suit has applied to this Court for a certificate to be sent to the Court of......at......for execution of the decree in the above suit by the said Court, alleging that the judgment-debtor

resides or has property within the local limits of the jurisdiction of the said Court, and it is deemed necessary and proper to send a certificate to the said Court under Order XXI Rule 5, of the Code of Civil Procedure, it is

*Ordered:*

That a copy of this order be sent to .. ..with a copy of the decree and of any order which may have been made for execution of the same and a certificate of non-satisfaction.

Dated the ... day of......11...

*Judge.*

No. 4.

**Certificate of non-satisfaction of Decree. (Or. 21, r. 5.)**

*(Title.)*

Certified that no (1) satisfaction of the decree of this Court in suit No. ......of 11 .... , a copy of which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

.........Dated the .....day of......11...

*Judge.*

[(1) *If partial, strike out "no" and state to what extent.*]

No. 5.

**Certificate of Execution of Decree transferred to another Court (Or. 21, r. 5.)**

*(Title.)*

| Number of suit and the Court by which the decree was passed. | Names of parties | Date of application for execution | Number of the execution case. | Processes issued and dates of service thereof. | Costs of execution. | Amount realised. | How the case is disposed of. | Remarks. |
|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| | | | | | Rs. ch. c. | Rs. ch. c. | | |

*Signature of Judge.*

## No. 6.

### Application for execution of Decree. (Or. 21, r. 9.)

In the Court of......I......, decree-holder, hereby apply for execution of the decree hereinbelow set forth :—

| No. of suit. | Names of parties. | Date of decree. | Whether any appeal preferred from decree. | Payment or adjustment made, if any. | Previous application, if any, with date and result. | Amount with interest due upon the decree or other relief granted thereby together with particulars of any cross decree. | Amount of costs, if any, awarded. | Against whom to be executed. | Mode in which the assistance of the Court is required. |
|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 789 of 1095 | A. B.—Plaintiff.........<br>C. D.—Defendant......... | Chingom 11th, 1095 | No. | None. | Rs. 72-4-0 recorded on application, dated the 4th Thulam, 1096. | Rs. 314 8-2 principal [interest at 6 per cent. per annum from the date of decree till payment.] | Rs. ch. cash.<br>As awarded in the decree 47 10 4<br>Subsequently incurred 8 2 0<br>Total...... 55 12 4 | Against the defendant C. D. | *[When attachment and sale of movable property is sought.]*<br>I pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the costs of taking out this execution, be realised by attachment and sale of defendant's movable property as per annexed list and paid to me.<br>*[When attachment and sale of immovable property is sought.]*<br>I pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the costs of taking out this execution be realised by the attachment and sale of defendant's immovable property specified at the foot of this application and paid to me. |

I......declare that what is stated herein is true to the best of my knowledge and belief.

*Signed.........,decree-holder.*

Dated the..........day of.......11......

*[When attachment and sale of immovable property is sought.]*

*Description and specification of property.*

The undivided one-third share of the judgment-debtor in a house situated in the village of......, value Rs. 40, and bounded as follows :—

East by G's house; west by H's house; south by public road; north by private lane and J's house.

I......declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified.

*Signed . ..., Decree-holder.*

No. 7.

**Notice to show Cause why execution should not issue.**

**(Or. 21, r. 20.)**

*(Title.)*

To

Whereas......has made application to this Court for execution of decree in Suit No.........of 11......on the allegation that the said decree has been transferred to him by assignment, this is to give you notice that you are to appear before this Court......on the .....day of......11..., to show cause why execution should not be granted.

GIVEN under my hand and the seal of the Court, this ......day of......11...

*Judge.*

No. 8.

**Warrant of attachment of Movable Property in execution of a decree for money. (Or. 21, r. 28.)**

*(Title.)*

To

The Amin of the Court.

WHEREAS......was ordered by decree of this Court passed on the...... day of......11..., in Suit No.......of......11... to pay to the plaintiff the sum of Rs.......as noted in the margin; and whereas the said sum of Rs......has not been paid; These are to command you to attach the movable property of the said ..... as set forth in the schedule hereunto annexed or which shall be pointed out to you by the said......and unless the said... ......shall pay to you the said sum of Rs. ......together with Rs......, the costs of this attachment, to hold the same until further orders from this Court.

| DECREE. | | | |
|---|---|---|---|
| Principal ... | | | |
| Interest ... | | | |
| Costs ... | | | |
| Costs of execution ... | | | |
| Further interest ... | | | |
| Total ... | | | |

You are further commanded to return this warrant on or before the .. day of ...11..., with an endorsement certifying the day on which and manner in which it has been executed, or why it has not been executed.

GIVEN under my hand and the seal of the Court, this......day of 11......

*Schedule.*

***Judge.***

---

No. 9.

**Warrant for seizure of specific movable property adjudged by decree. (Or. 21, r. 29.)**

*(Title.)*

To

The Amin of the Court.

WHEREAS... ..was ordered by decree of this Court passed on the...... day......11..., in Suit No......of 11..., to deliver to the plaintiff the movable property (*or* a .....share in the movable property) specified in the schedule hereunto annexed, and whereas the said property (*or* share has not been delivered.

These are to command you to seize the said movable property (*or* a ......share of the said movable property) and to deliver it to the plaintiff or to such person as he may appoint in his behalf.

GIVEN under my hand and the seal of the Court, this......day of.......... 11......

*Schedule.*

*Judge.*

---

No. 10.

**Notice to state objections to draft of document. (Or. 21, r. 32).**

*(Title.)*

To

TAKE notice that on the......day of......11 , the decree-holder in the above suit presented an application to this Court that the Court may execute on your behalf a deed of......whereof a draft is hereunto annexed, of the

immovable property specified hereunder and that the......day of......11..., is appointed for the hearing of the said application, and that you are at liberty to appear on the said day and to state in writing any objections to the said draft.

*Description of Property.*

GIVEN under my hand and the seal of the Court, this......day of...... 11....

*Judge.*

---

No. 11.

**Warrant to the Amin to give possession of land, etc. (Or. 21, r. 33).**

*(Title.)*

To

The Amin of the Court.

WHEREAS the undermentioned property in the occupancy of...... has been decreed to ......, the plaintiff in this suit; You are hereby directed to put the said......in possession of the same, and you are hereby authorised to remove any person bound by the decree who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this ......day of...... 11......

*Schedule.*

*Judge.*

---

No. 12.

**Notice to show cause why warrant of arrest should not issue. (Or. 21, r. 35.)**

*(Title.)*

To

WHEREAS......has made application to this Court for execution of decree in suit No ....of 11 ..... ...by arrest and imprisonment of your person, you are hereby required to appear before this Court on the......day of...... 11..., to show cause why you should not be committed to the civil prison in execution of the said decree.

GIVEN under my hand and the seal of the Court, this......day of......... 11... ,

*Judge.*

---

No. 13.

**Warrant of arrest in execution. (Or. 21, r. 36.)**

*(Title.)*

To

WHEREAS......was adjudged by a decree of the Court in Suit No...... of 11..., dated the......day of ......11..., to pay to the decree-holder the sum of Rs .....as noted in the margin and whereas the said sum of Rs......has not been paid to the said decree-holder in satisfaction of the said decree, these are to command you to arrest the said judgment-debtor and unless the said judgment-debtor shall pay to you the said sum of Rs......together with Rs......for the osts of executing this process, to bring the said defendant before the Court with all convenient speed. You are further commanded to return this warrant on or before the......day of......11..., with an endorsement certifying the day on which and manner in which it has been executed, or the reason why it has not been executed.

| | | | |
|---|---|---|---|
| Principal ... | | | |
| Interest ... | | | |
| Costs ... | | | |
| Execution ... | | | |
| Total ......... | | | |

GIVEN under my hand and the seal of the Court, this......day of...... 11......

*Judge.*

No. 14.

**Warrant of committal of judgment-debtor to jail.**
**(Or. 21, r. 38.)**

*(Title.)*

To

The Officer in charge of the Jail at....... .

WHEREAS......who has been brought before this Court this day of...... 11..., under a warrant in execution of a decree which was made and pronounced by the said Court on the......day of......11..., and by which decree it was ordered that the said......should pay......; and whereas the said......has not obeyed the decree nor satisfied the Court that he is entitled to be discharged from custody: You are hereby commanded and required to take and receive the said......into the civil prison and keep him imprisoned therein for a period not exceeding......or until the said decree shall be fully satisfied,

or the said......shall be otherwise entitled to be released according to the terms and provisions of Section 50 of the Code of Civil Procedure and the Court does hereby fix......annas per diem as the rate of the monthly allowance for the subsistence of the said......during his confinement under this warrant of committal.

GIVEN under my signature and the seal of the Court, this......day of...... 11....

*Judge.*

No. 15.

**Order for the Release of a person imprisoned in execution of a decree. (Sections 50, 51.)**

*(Title.)*

To

The Officer in charge of the Jail at......

UNDER orders passed this day, you are hereby directed to set free...... judgment-debtor now in your custody.

Dated......

*Judge.*

No. 16.

**Attachment in Execution.**

**Prohibitory Order, where the Property to be attached consists of Movable Property to which the defendant is entitled subject to a Lien or Right of some other person to the immediate possession thereof.**

**(Or. 21, r. 44.)**

*(Title.)*

To

WHEREAS......has failed to satisfy a decree passed against......on the ......day of......11..., in Suit No......of 11..., in favour of......for Rs......; It is ordered that the defendant be, and is hereby prohibited and restrained until the further order of this Court, from receiving from......the following property in the possession of the said......, that is to say......to which the defendant is entitled, subject to any claim of the said......, and the said......is hereby prohibited and restrained, until the further order of this Court, from delivering the said property to any person or persons whomsoever.

GIVEN under my hand and the seal of the Court, this......day of...... 11......

*Judge.*

No. 17.

**Attachment in Execution.**

**Prohibitory order, where the property consists of debts not secured by Negotiable Instruments.**

**(Or. 21, r. 44.)**

*(Title.)*

To

WHEREAS ....., has failed to satisfy a decree passed against...... on the......day of......11..., in Suit No......of 11... in favour of......for Rs......; It is ordered that the defendant be, and is hereby prohibited and restrained, until the further order of this Court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely......and that you, the said......, be and you are hereby prohibited and restrained, until the further order of this Court, from making payment of the said debt, or any part thereof, to any person whomsoever or otherwise than into this Court.

GIVEN under my hand and the seal of the Court, this......day of......11...

*Judge.*

---

No. 18.

**Attachment in Execution.**

**Prohibitory order, where the property consists of shares in the Capital of a Corporation.**

**(Or. 21, r. 44.)**

*(Title.)*

To

Defendant and to

......, Secretary of......Corporation.

WHEREAS......has failed to satisfy a decree passed against......on the ......day of......11..., in Suit No......of 11..., in favour of......, for Rs......; It is ordered that you, the defendant, be, and you are hereby, prohibited and restrained, until the further order of this Court, from making any transfer of ......shares in the aforesaid Corporation, namely,......, or from receiving payment of any dividends thereon ; and you......, the Secretary of the said Corporation, are hereby prohibited and restrained from permitting any such transfer or making any such payment.

GIVEN under my hand and the seal of the Court, this......day of......11...

*Judge.*

---

No. 19.

**Order to attach Salary of Public Officer or Servant of Local Authority. (Or. 21, r. 46.)**

*(Title.)*

To

WHEREAS.........judgment-debtor in the above-named case, is a *(describe office of judgment-debtor)* receiving his salary (*or* allowances) at your hands ; and whereas......, decree-holder in the said case, has applied in this Court for the attachment of the salary (*or* allowances) of the said......to the extent of ......due to him under the decree : You are hereby required to withhold the said sum of......from the salary of the said......in monthly instalments of...... and to remit the said sum (*or* monthly instalments) to this Court.

GIVEN under my hand and the seal of the Court, this......day of......11...

*Judge.*

---

No. 20.

**Order of attachment of Negotiable Instrument. (Or. 21, r. 49.)**

*(Title.)*

To

The Amin of the Court.

WHEREAS an order has been passed by this Court on the..... day of ......11..., for the attachment of......You are hereby directed to seize the said ......and bring the same into Court.

GIVEN under my hand and the seal of the Court, this... day of...... 11...

*Judge.*

---

No. 21.

**Attachment**

**Prohibitory order, where the Property consists of Money or of any Security in the custody of a Court of Justice or Officer of Government. (Or. 21, r. 50.)**

*(Title.)*

To

Sir,

The plaintiff having applied, under Rule 50 of Order XXI of the Code of Civil Procedure, for an attachment of certain money now in your hands

(*here state how the money is supposed to be in the hands of the person addressed, on what account, etc.*), I request that you will hold the said money subject to the further order of this Court.

I have the honour to be,

Dated the......day of......11...

SIR,

Your most obedient servant,

*Judge*.

No. 22.

**Notice of Attachment of a decree to the Court which passed it. (Or. 21, r. 51.)**

(*Title.*)

To

The Judge of the Court of......

Sir,

I have the honour to inform you that the decree obtained in your Court on the......day of......11..., by...... in suit No......of......11..., in which he was......and......has been attached by this Court on the application of......; the......in the suit specified above. You are therefore requested to stay the execution of the decree of your Court until you receive an intimation from this Court that the present notice has been cancelled or until execution of the said decree is applied for by the holder of the decree now sought to be executed or by his judgment-debtor.

I have the honour, etc.,

*Judge.*

Dated the......day of......11....

No. 23.

**Notice of Attachment of a Decree to the holder of the Decree. (Or. 21, r. 51).**

(*Title.*)

To

WHEREAS an application has been made in this Court by the decree-holder in the above suit for the attachment of a decree obtained by you on the......day of......11..., in the Court of......in suit No......of 11..., in which

was......and... ..was... ..; It is ordered that you, the said......, be, and you are hereby prohibited and restrained, until the further order of this Court, from transferring or charging the same in any way.

GIVEN under my hand and the seal of the Court, this......day of...... 11....

*Judge.*

No. 24.

**Attachment in Execution.**
**Prohibitory order, where the property consists of Immovable Property. (Or. 21, r. 52.)**

*(Title.)*

To Defendant

WHEREAS you have failed to satisfy a decree passed against you on the......day of......11..., in suit No......of 11..., in favour of......for Rs....... It is ordered that you, the said......be, and you are hereby, prohibited and restrained, until the further order of this Court, from transferring or charging the property specified in the schedule hereunto annexed, by sale, gift or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift or otherwise.

GIVEN under my hand and the seal of the Court, this......day of...... 11....,

*Schedule.*

*Judge.*

No. 25.

**Order for payment to the plaintiff, etc., of Money, etc., in the hands of a third party. (Or. 21, r. 54.)**

*(Title.)*

To

WHEREAS the following property...has been attached in execution of a decree in suit No......of......11...passed on the.........day of......11...,... in favour of......for Rs.......; It is ordered that the property so attached, consisting of Rs .....in money and Rs......in currency notes, or a sufficient part thereof to satisfy the said decree shall be paid over by you, the said...... to......

GIVEN under my hand and the seal of the Court, this......day o?...... 11 .

*Judge.*

No. 2

**Notice to attaching crediior. (Or. 21, r. 56.)**

*(Title.)*

WHEREAS......has made application to this Court, for the removal of attachment on......placed at your instance in execution of the decree in suit No.......of 11..., this is to give you notice to appear before this Court on ......, the......day of......11..., either in person or by a pleader of the Court duly instructed to support your claim, as attaching creditor.

GIVEN under my hand and the seal of the Court, this........ day of...... 11....

*Judge.*

---

No. 27.

**Warrant of sale of property in execution of a decree for money. (Or. 21, r. 64.)**

*(Title.)*

To

The Amin of the Court.

THESE are to command you to sell by auction, after giving......day's previous notice, by affixing the same in this Court-house, and after making due proclamation, the .....property attached under a warrant from this Court, dated the......day of......11..., in execution of a decree in favour of......in suit No.......of 11......, or so much of the said property as shall realise the sum of Rs......, being the......of the said decree and costs still remaining unsatisfied.

You are further commanded to return this warrant on or before the ......day of......11..., with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this..... day of...... 11....

*Judge.*

---

No. 28.

**Notice of the day fixed for settling a sale Proclamation (Or. 21, r. 64.)**

*(Title.)*

To Judgment-debtor.

Whereas in the above-named suit..., the decree-holder has applied for the sale of... .. ; You are hereby informed......that the......day of...... 11..., has been fixed for settling the terms of the proclamation of sale.

GIVEN under my hand and the seal of the Court, this......day of...... 11....

*Judge.*

---

No. 29.

**Proclamation of Sale. (Or. 21, r. 64.)**

*(Title.)*

Notice is hereby given that, under Rule 62 of Order XXI of the Code of Civil Procedure, an order has been passed by this Court for the sale of the attached property mentioned in the annexed schedule, in satisfaction of the claim of the decree-holder in the suit (1) mentioned in the margin, amounting with costs and interest up to date of sale to the sum of.... .

(1) Suit No......of 10..., decided by the...... of......in which......was plaintiff and...was defendant.

The sale will be by public auction, and the property will be put up for sale in the lots specified in the schedule. The sale will be of the property of the judgment-debtors above-named as mentioned in the schedule below; and the liabilities and claims attaching to the said property, so far as they have been ascertained, are those specified in the schedule against each lot.

In the absence of any order of postponement the sate will be held by......at the monthly sale commencing at......o'clock on the......at.........In the event, however of the debt above specified and of the costs of the sale being tendered or paid before the knocking down of any lot, the sale will be stopped.

At the sale the public generally are invited to bid, either personally or by duly authorised agent. No bid by, or on behalf of, the judgment-creditors above-mentioned, however, will be accepted, nor will any sale to them be valid without the express permission of the Court previously given. The following are the further

*Conditions of Sale.*

1. The particulars specified in the schedule below have been stated to the best of the information of the Court, but the Court will not be answerable for any error, mis-statement or omission in this proclamation.

2. The amount by which the biddings are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.

3. The highest bidder shall be declared to be the purchaser of any lot, provided always that he is legally qualified to bid, and provided that it shall be in the discretion of the Court or officer holding the sale to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so.

4. For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it subject always to the provisions of Rule 67 of Order XXI.

5. In the case of movable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment the property shall forthwith be again put up and re-sold.

6. In the case of immovable property, the person declared to be the purchaser shall pay immediately after such declaration a deposit of 25 per cent. on the amount of his purchase-money to the officer conducting the sale, and in default of such deposit the property shall forthwith be put up again and re-sold.

7. The full amount of the purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day.

8. In default of payment of the balance of purchase-money within the period allowed, the property shall be re-sold after the issue of a fresh notification of sale. The deposit, after defraying the expenses of the sale, may, if the Court thinks fit, be forfeited to Government and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

GIVEN under my hand and the seal of the Court, this......day of...... 11...

*Judge.*

*Schedule of property.*

| Number of lot. | Description of property to be sold, with the name of each owner where there are more judgment-debtors than one. | The revenue assessed upon the estate or part of the estate, if the property to be sold is an interest in an estate or a part of an estate paying revenue to Government. | Detail of any incumbrances to which the property is liable. | Claims, if any, which have been put forward to the property and any other known particulars bearing on its nature and value. |
|---|---|---|---|---|
| | | | | |

No. 30.

## Order on the Nazir for causing service of Proclamation of Sale. (Or. 21, r. 64.)

*(Title.)*

To

The Nazir of the Court.

WHEREAS an order has been made for the sale of the property of the judgment-debtor specified in the schedule hereunder annexed, and whereas the......day of..... 11...has been fixed for the sale of the property, ...copies of the proclamation of sale are by this warrant made over to you, and you are hereby ordered to have the proclamation published by beat of drum within each of the properties specified in the said schedule, to affix a copy of the said proclamation on a conspicuous part of each of the said properties and afterwards on the Court-house, and then to submit to this Court a report showing the dates on which and the manner in which the proclamations have been published.

Dated the.... day of......11...

*Schedule.*

*Judge.*

### No. 31.

### Certificate by Officer holding a Sale of the Deficiency of Price on a Re-sale of property by reason of the purchaser's default. (Or. 21, r. 68.)

*(Title.)*

Certified that at the re-sale of the property in execution of the decree in the above named suit, in consequence of default on the part of......, purchaser, there was a deficiency in the price of the said property amounting to Rs... .., and that the expenses attending such re-sale amounted to Rs......, making a total of Rs......, which sum is recoverable from the defaulter.

Dated the... day of......11...

*Officer holding the sale.*

---

### No. 32.

### Notice to person in possession of movable property sold in Execution. (Or. 21, r. 76.)

*(Title.)*

To

WHEREAS .....has become the purchaser at a public sale in execution of the decree in the above suit of .....now in your possession, you are hereby prohibited from delivering possession of the said .....to any person except the said......

GIVEN under my hand and the seal of the Court this .....day of...... 11... .

*Judge.*

---

### No. 33.

### Prohibitory Order against payment of debts sold in execution to any other than the purchaser. (Or. 21, r. 76.)

*(Title.)*

To

...... and to..................

WHEREAS......has become the purchaser at a public sale in execution of the decree in the above suit of......being debts due from you......to you...

It is ordered that you......be, and you are hereby, prohibited from receiving, and you......from making payment of, the said debt to any person or persons except the said...

Given under my hand and the seal of the Court, this......day of..... 11...

*Judge.*

---

No. 34.

## Prohibitory Order against the Transfer of Shares sold in Execution. (Or. 21, r. 76.)

*(Title.)*

To

......and......, Secretary of......Corporation.

WHEREAS......has become the purchaser at a public sale in execution of the decree, in the above suit, of certain shares in the above Corporation, that is to say, of......standing in the name of you......; It is ordered that you ......be, and you are hereby, prohibited from making any transfer of the said shares to any person except the said......, the purchaser aforesaid, or from receiving any dividends thereon; and you......Secretary of the said Corporation, from permitting any such transfer or making any such payment to any person except the said......, the purchaser aforesaid.

GIVEN under my hand and the seal of the Court, this......day of...... 11..

*Judge.*

---

No. 35.

## Certificate to Judgment-debtor authorising him to mortgage, lease or sell property. (Or. 21, r. 80.)

*(Title.)*

WHEREAS in execution of the decree passed in the above suit an order was made on the......day of......11......for the sale of the undermentioned property of the judgment-debtor......and whereas the Court has, on the application of the said judgment-debtor, postponed the said sale to enable him to raise the amount of the decree by mortgage, lease or private sale of the said property or of some part thereof:

This is to certify that the Court doth hereby authorise the said judgment-debtor to make the proposed mortgage, lease or sale within a period of ......from the date of this certificate; provided that all moneys payable under such mortgage, lease or sale shall be paid into this Court and not to the said judgment-debtor.

*Description of property.*

GIVEN under my hand and the seal of the Court, this......day of...... 11...

*Judge.*

---

No. 36.

**Notice to show cause why sale should not be set aside.**
**(Or. 21, rr. 87, 89.)**

*(Title.)*

To

WHEREAS the under-mentioned property was sold on the......day of ......11... in execution of the decree passed in the above-named suit, and whereas......the decree-holder [*or* judgment-debtor], has applied to this Court to set aside the sale of the said property on the ground of a material irregularity [*or* fraud] in publishing [*or* conducting] the sale, namely, that...

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this Court on the......day of......11..., when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this......day of...... 11...

*Description of property.*

*Judge.*

---

No. 37.

**Notice to show cause why sale should not be set aside.**
**(Or. 21, rr. 88, 89.)**

*(Title.)*

To

WHEREAS......, the purchaser of the under-mentioned property sold on the.........day of......11..., in execution of the decree passed in the above named suit has applied to this Court to set aside the sale of the said property on the ground that .....the judgment-debtor had no saleable interest therein :

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this Court on the......day of .....11...when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this......day of...... 11...

*Description of property.*

*Judge.*

No. 38.

## Certificate of sale of land. (Or. 21, r. 91.)

*(Title.)*

THIS is to certify that......has been declared the purchaser at a sale by public auction on the......day of......11..., of......in execution of decree in this suit, and that the said sale has been duly confirmed by this Court.

GIVEN under my hand and the seal of the Court, this......day of......11...

*Judge.*

---

No. 39.

## Order for delivery to certified purchaser of land at a sale in execution. (Or. 21, r. 92.)

*(Title.)*

To

The Amin of the Court

WHEREAS ......has become the certified purchaser of......at a sale in execution of decree in Suit No ....of 11...; You are hereby ordered to put the said......, the certified purchaser, as aforesaid, in possession of the same.

GIVEN under my hand and the seal of the Court, this......day of...11...

*Judge.*

---

No. 40.

## Summons to appear and answer charge of obstructing execution of decree. (Or. 21, r. 24.)

*(Title.)*

To

WHEREAS......, the decree-holder in the above suit, has complained to this Court that you have resisted (*or* obstructed) the officer charged with the execution of the warrant for possession :

You are hereby summoned to appear in this Court on the day......of 11...at......A. M., to answer the said complaint.

GIVEN under my hand and the seal of the Court, this......day of...... 11....

*Judge.*

---

No. 41.

**Warrant of Committal. (Or. 21, r. 95.)**

*(Title.)*

To

The Officer in charge of the Jail at.........

WHEREAS the under-mentioned property has been decreed to......the plaintiff in this suit, and whereas the Court is satisfied that......without any just cause resisted [*or* obstructed] and is still resisting [*or* obstructing] the said...in obtaining possession of the property, and whereas the said......has made application to this Court that the said...be committed to the civil prison;

You are hereby commanded and required to take and receive the said ......into the civil prison and to keep him imprisoned therein for the period of......days.

GIVEN under my hand and the seal of the Court, this......day of...11...

*Judge.*

# APPENDIX F.

## SUPPLEMENTAL PROCEEDINGS.

No. 1.

**Warrant of Arrest before Judgment. (Or. 36, r. 1.)**

*(Title.)*

To

WHEREAS......, the plaintiff in the above suit, claims the sum of Rs...... as noted in the margin, and has proved to the satisfaction of the Court that there is probable cause for believing that the defendant................ is about to ............... These are to command you to demand and receive from the said ..................the sum of Rs..........as sufficient to satisfy the plaintiff's claim, and unless the said sum of Rs............ is forthwith delivered to you by or on behalf of the said..........., to take the said........... into custody, and to bring him before this Court, in order that he may show cause why he should not furnish security to the amount of Rs.... . ..... for his personal appearance before the Court, until such time as the said suit shall be fully and finally disposed of, and until satisfaction of any decree that may be passed against him in the suit.

| | | | |
|---|---|---|---|
| Principal ... | | | |
| Interest .. | | | |
| Costs ... | | | |
| Total | | | |

GIVEN under my hand and the seal of the Court, this......day of......11...

*Judge.*

No. 2.

### Security for Appearance of Defendant arrested before Judgment. (Or. 36, r. 2.)

*(Title.)*

WHEREAS at the instance of......, the plaintiff in the above suit,..... , the defendant, has been arrested and brought before the Court;

And whereas on the failure of the said defendant to show cause why he should not furnish security for his appearance, the Court has ordered him to furnish such security :

Therefore I......have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall appear at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the said suit; and in default of such appearance I bind myself, my heirs and executors, to pay to the said Court, at its order, any sum of money that may be adjudged against the said defendant in the said suit.

Witness my hand at......this......day of......11....

*Signed.*

Witnesses.

1.
2.

---

No. 3.

### Summons to defendant to appear on Surety's application for Discharge. (Or. 36, r. 3.)

*(Title.)*

To

WHEREAS......, who became surety on the......day of..... 11...for your appearance in the above suit, has applied to this Court to be discharged from his obligation:

You are hereby summoned to appear in this Court in person on the ......day of......11..., at..... A. M., when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this..... day of...... 11....

*Judge.*

No. 4.

**Order for Committal. (Or. 36, r. 4.)**

*(Title.)*

To

WHEREAS......, plaintiff in this suit, has made application to the Court that security be taken for the appearance of......, the defendant, to answer any judgment that may be passed against him in the suit; and whereas the Court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of security, which he has failed to do; it is ordered that the said defendant......be committed to the civil prison until the decision of the suit; or, if judgment be pronounced against him, until satisfaction, of the decree.

GIVEN under my hand and the seal of the Court, this...day of......11....

***Judge.***

---

No. 5.

**Attachment before Judgment, with order to call for Security for Fulfilment of Decree. (Or. 36, r. 5.)**

*(Title.)*

To

The Amin of the Court.

WHEREAS......has proved to the satisfaction of the Court that the defendant in the above suit......;

These are to command you to call upon the said defendant......on or before the......day of......11..., either to furnish security for the sum of rupees ......to produce and place at the disposal of this Court when required......or the value thereof, or such portion of the value as may be sufficient to satisfy any decree that may be passed against him; or to appear and show cause why he should not furnish security; and you are further ordered to attach the said...and keep the same under safe and secure custody until the further order of the Court; and you are further commanded to return this warrant on or before the......day of......11...with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this......day of...... 11....

***Judge.***

---

## No. 6.

### Security for the Production of Property. (Or. 36, r. 5.)

*(Title.)*

WHEREAS at the instance of...... the plaintiff in the above suit,......the defendant has been directed by the Court to furnish security in the sum of Rs......to produce and place at the disposal of the Court the property specified in the schedule hereunto annexed;

Therefore I......have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall produce and place at the disposal of the Court, when required, the property specified in the said schedule, or the value of the same, or such portion thereof as may be sufficient to satisfy the decree; and in default of his so doing, I bind myself, my heirs and executors, to pay to the said Court, at its order, the said sum of Rs......or such sum not exceeding the said sum as the said Court may adjudge.

*Schedule.*

Witness my hand at......this......day of......11....

*(Signed.)*

Witnesses.

1.
2.

## No. 7.

### Attachment before Judgment, on Proof of Failure to furnish Security. (Or. 36, r. 6.)

*(Title.)*

To

The Amin of the Court.

WHEREAS......, the plaintiff in this suit, has applied to the Court to call upon......, the defendant, to furnish security to fulfil any decree that may be passed against him in the suit, and whereas the Court has called upon the said......to furnish such security, which has failed to do; These are to command you to attach......, the property of the said......, and keep the same under safe and secure custody until the further order of the Court; and you are further commanded to return this warrant on or before the......day of ......11...with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this...day of......11....

*Judge.*

No. 8.

**Temporary Injunctions. (Or. 37, r. 1.)**

*(Title.)*

Upon motion made unto this Court by......; Pleader of [*or* Counsel for] the plaintiff A. B., and upon reading the petition of the said plaintiff in this matter filed [this day] [*or* the plaint filed in this suit on the......day of...... 11..., *or* the written statement of the said plaintiff filed on the......day...... of...... ] and upon hearing the evidence of......and......in support thereof [*if after notice and defendant not appearing: add*, and also the evidence of...... as to service of notice of this motion upon the defendant C. D.], this Court doth order that an injunction be awarded to restrain the defendant C. D., his servants, agents and workmen, from pulling down, or suffering to be pulled down, the house in the plaint in the said suit of the plaintiff mentioned [*or* in the written statement, *or* petition, of the plaintiff and evidence at the hearing of this motion mentioned],......, and from selling the materials whereof the said house is composed, until the hearing of this suit or until the further order of this Court.

Dated this......day of......11....

*Judge.*

[*Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part of the order may run thus:—*]

to restrain the defendants......and......from parting with the custody of them or any of them or endorsing, assigning or negotiating the promissory note [*or* bill of exchange] in question, dated on or about the......, etc., mentioned in the plaintiff's plaint [*or* petition] and the evidence heard at this motion until the hearing of this suit, or until the further order of this Court.

[*In Copyright cases*] to restrain the defendant C. D., his servants, agents or workmen, from printing, publishing or vending a book, called...... or any part thereof, until the, etc.

[*Where part only of a book is to be restrained*]

to restrain the defendant C. D. his servants, agents or workmen, from printing, publishing, selling or otherwise disposing of such parts of the book in the plaint, [*or* petition and evidence, etc.] mentioned to have been published by the defendant as hereinafter specified, namely, that part of the said book which is entitled......and also that part which is entitled......[*or* which is contained in page......to page......both inclusive] until......, etc.

[*In Patent cases*] to restrain the defendant C. D., his agents, servants and workmen, from making or vending any perforated bricks [*or* as the case may be] upon the principle of the inventions in the plaintiff's plaint [*or* petition, etc. *or* written statement, etc.,] mentioned belonging to the plaintiffs, or either of them, during the remainder of the respective terms of the patents in the plaintiff's plaint [*or* as the case may be] mentioned, and from counterfeiting, imitating or resembling the same inventions, or either of them, or making any addition thereto, or subtraction therefrom, until the hearing, etc.

[*In cases of Trade marks*] to restrain the defendant C. D., his servants, agents or workmen, from selling, or exposing for sale, or procuring to be sold, any composition or blacking [*or* as the case may be] described as or purporting to be blacking manufactured by the plaintiff A. B., in bottles having affixed thereto such labels as in the plaintiff's plaint [*or* petition, etc.] mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff A. B., and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff A. B. until the, etc.

[*To restrain a partner from in any way interfering in the business.*]

to restrain the defendant C. D., his agents and servants, from entering into any contract, and from accepting, drawing, endorsing or negotiating any bill of exchange, note or written security in the name of the partnership-firm of B. and D. and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement or undertaking, and from doing, or causing to be done, any act, in the name or on the credit of the said partnership-firm of B. and D., or whereby the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise or undertaking until the, etc.

---

No. 9.

## Appointment of a Receiver. (Or. 38, r. 1.)

***(Title.)***

To

Whereas ......has been attached in execution of a decree passed in the above suit on the......day of......11..., in favour of......; You are hereby

(subject to your giving security to the satisfaction of the Court) appointed receiver of the said property under Order XXXVIII of the Code of Civil Procedure, with full powers under the provisions of that Order.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on....... You will be entitled to remuneration at the rate of .....per cent. upon your receipts under the authority of this appointment.

Given under my hand and the seal of the Court, this......day of.........
11 ....

*Judge.*

---

No. 10.

**Bond to be given by Receiver. (Or. 38, r. 3).**

*(Title.)*

Know all men by these presents, that we......and .....and...are jointly and severally bound to......of the Court of......in Rs.......to be paid to the said......or his successor in office for the time being. For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents.

Dated this......day of......11....

Whereas a plaint has been filed in this Court by......against.........for the purpose of [*here insert the object of suit*] :

And whereas the said......has been appointed, by order of the above mentioned Court, to receive the rents and profits of the immovable property and to get in the outstanding movable property of......in the said plaint named.

Now the condition of this obligation is such, that if the above-bounden ......shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immovable property, and in respect of the movable property, of the said......at such periods as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

Signed and delivered by the above-bounden in the presence of........

*Note.*—If deposit of money is made, the memorandum thereof should follow the terms of the condition of the bond.

---

# APPENDIX G.

## ARBITRATION.

### No. 1.

### Application for an Order of Reference.

*(Title of suit.)*

1. This suit is instituted for *(state nature of claim.)*

2. The matter in difference between the parties is *(state matter of difference.)*

3. The applicants being all the parties interested have agreed that the matter in difference between them shall be referred to arbitration.

4. The applicants therefore apply for an order of reference.

A. B.

C. D.

Dated the......day of......11....

*Note.*—If the parties are agreed as to the arbitrators, it should be so stated.

### No. 2.

### Order of Reference.

*(Title of suit).*

Upon reading the application presented on the day of 11...it is ordered that the following matter in difference arising in this suit, namely :—

---

be referred for determination to X and Y, or in case of their not agreeing then to the determination of Z, who is hereby appointed to be umpire; and such arbitrators are to make their award in writing on or before the......day of......11 .., and in case of the said arbitrators not agreeing in an award the said umpire is to make his award in writing within ......months after the time during which it is within the power of the arbitrators to make an award shall have ceased.

**Liberty to apply.**

GIVEN under my hand and the seal of the Court, this......day of........ 11....

*Judge.*

No. 3.

## Order for Appointment of New Arbitrators.

*(Title of suit.)*

Whereas by an order, dated the......day of......11... *(state order of reference and death, refusal, etc., of arbitrator)*, it is by consent ordered that Z be appointed in the place of X (deceased, or as the case may be) to act as arbitrator with Y, the surviving arbitrator, under the said order; and it is ordered that the award of the said arbitrators be made on or before the...... day of......10...

GIVEN under my hand and the seal of the Court, this......day of...11...

*Judge.*

---

No. 4.

## Special Case.

*(Title of suit.)*

In the matter of an arbitration between A. B. of......and *C. D.* of...... the following special case is stated for the opinion of the Court :—

[*Here state the facts concisely in numbered paragraphs.*]

The questions of law for the opinion of the Court are :—

First whether ______________________________

Secondly, whether ______________________________

*X.*
*Y.*

Dated the. ....day of... 11...

---

No. 5.

## Award.

*(Title of suit.)*

In the matter of an arbitration between *A. B.* of..... and *C. D.* of... :—

Whereas in pursuance of an order of reference made by the Court of ... and dated the......day of....... 11......the following matter in difference between *A. B.* and *C. D.*, namely, ____________________________ has been referred to us for determination;

Now we, having duly considered the matter referred to us, do hereby make our award as follows :—

We award—

(1) that ______________________________

(2) that ______________________________

Dated the......day of......11....

*X.*
*Y.*

# APPENDIX H

## APPEAL, REFERENCE AND REVIEW.

### No. 1.

### Memorandum of Appeal. (Or. 40, r. 1.)

*(Title.)*

The......above-named appeals to the......Court at......from the decree of......in Suit No......of ... 10.. , dated the......day of......11..., and sets forth the following grounds of objection to the decree appealed from, namely:-

### No. 2.

### Security Bond to be given on order being made to stay Execution of Decree. (Or. 40, r. 5.)

*(Title.)*

To

This security bond on stay of execution of decree executed, by...... witnesseth:—

That......, the plaintiff in Suit No.... ..of 10..., having sued......, the defendant, in this Court and a decree having been passed on the......day of ......11... in favour of the plaintiff, and the defendant having preferred an appeal from the said decree in the......Court, the said appeal is still pending.

Now the plaintiff decree-holder having applied to execute the decree, the defendant has made an application praying for stay of execution and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of Rs. .... mortgaging the properties specified in the schedule hereunto annexed, and covenant that if the decree of the first Court be confirmed or varied by the Appellate Court the said defendant shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this .....day of... ..11 ... .

*Schedule.*

*(Signed)*

Witnessed by

1. ......
2. ......

No. 3.

## Security Bond to be given during the Pendency of Appeal.
(Or. 40, r. 6.)

*(Title.)*

To

This security bond on stay of execution of decree executed by...... witnesseth:—

That..... , the plaintiff in Suit No.......of 10..., having sued........., the defendant, in this Court and a decree having been passed on the......day of... 11...in favour of the plaintiff, and the defendant having preferred an appeal from the said decree in the......Court, the said appeal is still pending.

Now the plaintiff decree-holder has applied for execution of the said decree and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of Rs.......mortgaging the properties specified in the schedule hereunto annexed, and covenant that if the decree of the first Court be reversed or varied by the Appellate Court, the plaintiff shall restore any property which may be or has been taken in execution of the said decree and shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this .....day of.....11... .

*Schedule.*

Witnessed by *(Signed)*

1. ......
2. ......

---

No. 4.

## Security for Costs of Appeal. (Or. 40, r. 10.)

*(Title.)*

To

This security bond for costs of appeal executed by......witnesseth:—

This appellant has preferred an appeal from the decree in Suit No.... ...of 10..., against the respondent, and has been called upon to furnish security. Accordingly I, of my own free will, stand security for the costs of the appeal, mortgaging the properties specified in the schedule hereunto annexed. I shall not transfer the said properties or any part thereof, and in the

event of any default on the part of the appellant, I shall duly carry out any order that may be made against me with regard to payment of the costs of appeal. Any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this......day of......11... .

*Schedule.*

*(Signed)*

Witnessed by

1. ......
2. ......

---

No. 5.

**Intimation to Lower Court of Appeal. (Or. 40, r. 12.)**

*(Title.)*

To

You are hereby directed to take notice that......the......in the above suit, has preferred an appeal to this Court from the decree passed by you therein on the......day of......11... .

You are requested to send with all practicable despatch all material papers in the suit

Dated the......day of......11... *Judge.*

---

No. 6.

**Notice to Respondent of the Day fixed for the Hearing of the Appeal. (Or. 40, r. 13.)**

*(Title.)*

Appeal from the......of the Court of ...dated the......day of......11... .

To

*Respondent.*

Take notice that an appeal from the decree of...in this case has been presented by......and registered in this Court, and that the......day of 11..., has been fixed by this Court for the hearing of this appeal.

If no appearance is made on your behalf by yourself, your pleader, or by some one by law authorised to act for you in this appeal, it will be heard and decided in your absence.

GIVEN under my hand and the seal of the Court, this...day of...11....

*Judge.*

[*Note.*—If a stay of execution has been ordered, intimation should be given of the fact on this notice.]

---

No. 7.

## Notice to a Party to a Suit not made a Party to the Appeal but joined by the Court as a Respondent.

**(Or. 40, r. 19.)**

*(Title.)*

To

Whereas you were a party in suit No.......of 11..., in the Court of...... and whereas the......has preferred an appeal to this Court from the decree passed against him in the said suit and it appears to this Court that you are interested in the result of the said appeal;

This is to give you notice that this Court has directed you to be made a respondent in the said appeal and has adjourned the hearing thereof till the......day of......11..., at... ..A. M. If no appearance is made on your behalf on the said day and at the said hour the appeal will be heard and decided in your absence.

GIVEN under my hand and the seal of the Court, this...day of......11...

*Judge.*

---

No. 8.

## Memorandum of Cross Objection. (Or. 40, r. 21)

*(Title.)*

Whereas the......has preferred an appeal to the..... Court at......from the decree of......in suit No,......of 11..., dated the......day of......11..., and whereas notice of the day fixed for hearing the appeal was served on the...... on the......day of......11..., the......files this memorandum of cross objection under Rule 21 of Order XL of the Code of Civil Procedure, and sets forth the following grounds of objection to the decree appealed from, namely—

---

**No. 9.**

## Decree in Appeal. (Or. 40, r. 34.)

*(Title.)*

Appeal No.......of 11 ..from the decree of the Court of......dated the... day of......11...

*Memorandum of Appeal.*

*Plaintiff.*

*Defendant.*

The .....above-named appeals to the .....Court at......from the decree of......in the above suit, dated the......day of......11 .., for the following reasons, namely:—

This appeal coming on for hearing on the......day of......11.. , before ...... , in the presence of......for the appellant and of......for the respondent, it is ordered—

The costs of this appeal, as detailed below, amounting to Rs......, are to be paid by.........The costs of the original suit are to be paid.........

GIVEN under my hand this......day of......11......

*Judge.*

*Costs of Appeal.*

| Appellant. | Amount. | | | Respondent. | Amount. | | |
|---|---|---|---|---|---|---|---|
| | Rs. | Ch. | Ca. | | Rs. | Ch. | Ca. |
| 1. Stamp for memorandum for appeal. | | | | Stamp for power. | | | |
| 2. Do. for power. | | | | Do. for petition. | | | |
| 3. Service of processes. | | | | Service of processes. | | | |
| 4. Pleader's fee on Rs. | | | | Pleader's fee on Rs. | | | |
| Total... | | | | Total | | | |

No. 10.

**Application to appeal in forma pauperis.** (Or. 43, r. 1.)

*(Title.)*

I......the......above-named, present the accompanying memorandum of appeal from the decree in the above suit and apply to be allowed to appeal as a pauper.

Annexed is a full and true schedule of all the movable and immovable property belonging to me with the estimated value thereof.

Dated the......day of......11....

*(Signed)*

NOTE—Where the application is by the plaintiff he should state whether he applied and was allowed to sue in the Court of first instance as a pauper.

No. 11.

**Notice of appeal in forma pauperis. (Or. 43, r. 1.)**

*(Title.)*

Whereas the above-named .....has applied to be allowed to appeal as a pauper from the decree in the above suit dated the .....day of......11...and whereas the......day of......11...has been fixed for hearing the application, notice is hereby given to you that if you desire to show cause why the applicant should not be allowed to appeal as a pauper an opportunity will be given to you of doing so on the afore-mentioned date.

GIVEN under my hand and the seal of the Court, this......day of...... 11....

*Judge.*

---

No. 12.

**Notice to show cause why a Review should not be granted. (Or. 45, r. 4.)**

*(Title.)*

To

TAKE notice that......, has applied to this Court for a review of its decree passed on the......day of......11...in the above case. The......day of...... 11...is fixed for you to show cause why the Court should not grant a review of its decree in this case.

GIVEN under my hand and the seal of the Court, this......day of...... 11...

*Judge.*

---

## APPENDIX I.

---

**MISCELLANEOUS.**

---

No. 1.

**Agreement of parties as to issues to be tried. (Or. 14, r. 6.)**

*(Title.)*

WHEREAS we, the parties in the above suit, are agreed as to the question of fact [*or* of law] to be decided between us and the point at issue between us is whether a claim founded on a bond, dated the......day of......11... and filed as Exhibit......in the said suit, is or is not beyond the statute of limitation ***(or state the point at issue whatever it may be)*** :—

We therefore severally bind ourselves that, upon the finding of the Court in the negative (*or* affirmative] of such issue, ......will pay to the said ......the sum of Rupees...... (*or* such sum as the Court shall hold to be due thereon), and I, the said......, will accept the said sum of Rupees...... (*or* such sum as the Court shall hold to be due) in full satisfaction of my claim on the bond aforesaid [*or* that upon such finding I, the said......will do or abstain from doing, etc., etc.].

*Plaintiff.*
*Defendant.*

Witnesses—
1.
2.
Dated the......day of......11...

No. 2.

**Notice of application for the transfer of a suit to another Court for trial. (Section 23.)**

In the Court of the District Judge of......

No......of 10......

To

WHEREAS an application, dated the......day of......11... has been made to this Court by......the......in suit No......of 11......now pending in the Court of the......at......, in which......is plaintiff and......is defendant, for the transfer of the suit for trial to the Court of the......at......:—

You are hereby informed that the......day of......11... has been fixed for the hearing of the application, when you will be heard if you desire to offer any objection to it.

GIVEN under my hand and the seal of the Court, this......day of...... 11......

*Judge.*

**No. 3.**

**Notice of payment into Court. (Or. 24, r. 2.)**

*(Title.)*

TAKE notice that the defendant has paid into Court Rs......and says that that sum is sufficient to satisfy the plaintiff's claim in full.

*XY, Pleader for the defendant.*

To Z., *Pleader for the plaintiff.*

No. 4.

## Notice to show Cause. (General Form.)

*(Title.)*

WHEREAS the above-named........has made application to this Court that..............

You are hereby warned to appear in this Court in person or by a pleader duly instructed on the......day of......11..., at......o'clock in the fore-noon, to show cause against the application, failing wherein, the said application will be heard and determined *ex parte.*

GIVEN under my hand and the seal of the Court this......day of...... 11... .

*Judge.*

---

No. 5.

## List of documents produced by $\frac{\text{PLAINTIFF}}{\text{DEFENDANT}}$ (Or. 13, r. 1.)

*(Title.)*

| No. | Description of document. | Date, if any, which the document bears. | Signature of party or pleader. |
|---|---|---|---|
| 1 | 2 | 3 | 4 |

No. 6.

## Notice to parties of the day fixed for examination of a witness about to leave the jurisdiction. (Or. 18, r. 15).

*(Title.)*

To

......*plaintiff* (*or* defendant.)

WHEREAS... ..in the above suit application has been made to the Court by......that the examination of......, a witness required by the said......, in the said suit may be taken immediately; and it has been shown to the Court's satisfaction that the said witness is about to leave the Court's jurisdiction (*or any other good and sufficient cause to be stated*):

TAKE notice that the examination of the said witness......will be taken by the Court on the......day of......11...

Dated the... day of......11...

*Judge.*

---

No. 7.

**Commission to examine absent witness. (Or. 26, rr. 4, 18.)**

(*Title.*)

To

WHEREAS the evidence of......is required by the......in the above suit; and whereas......, you are requested to take the evidence on interrogatories [*or viva voce*] of such witness......, and you are hereby appointed Commissioner for that purpose. The evidence will be taken in the presence of the parties or their agents if in attendance, who will be at liberty to question the witness on the points specified, and you are further requested to make return of such evidence as soon as it may be taken.

Process to compel the attendance of the witness will be issued by any Court having jurisdiction on your application.

A sum of Rs......., being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this......day of...... 11...

*Judge.*

No. 8.

**Letter of Request. (Or. 26, r. 5.)**

(*Title.*)

(Heading:—To the President and Judges of etc., *or as the case may be.*)

WHEREAS a suit is now pending in the .....in which *A. B.* is plaintiff and *C. D.* is defendant; And in the said suit the plaintiff claims.

(*Abstract of claim.*)

And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties that the following persons should be examined as witnesses upon oath touching such matters, that is to say:

*E. F.* of......
*G. H.* of ..... and
*I. J.* of......

And it appearing that such witnesses are resident within the jurisdiction of your honourable Court;

Now I......, as the .....of the said Court, have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the Court, you, as the President and Judges of the said......, or some one

or more of you, will be pleased to summon the said witness (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before some one or more of you or such other person as according to the procedure of your Court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request *(or viva voce)* touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing, if any, for the examination of other witnesses to the said Court.

---

No. 9.

**Commission for a local investigation, or to examine accounts.**
**(Or. 26, rr. 9, 11.)**

*(Title.)*

To

WHEREAS it is deemed requisite, for the purpose of this suit that a commission for......should be issued; You are hereby appointed Commissioner for the purposes of.........

Process to compel the attendance before you of any witnesses or for the production of any documents whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of Rs......., being your fee in the above is herewith forwarded.

GIVEN under my hand and the seal of the Court, this—...day of......
11...

*Judge.*

---

No. 10.

## Commission to make Partition. (Or. 26, r. 13.)

*(Title.)*

To

WHEREAS it is deemed requisite for the purpose of this suit that a commission should be issued to make the partition or separation of the property specified in, and according to the rights as declared in, the decree of this Court, dated the......day of......11...; You are hereby appointed Commissioner for the said purpose and are directed to make such inquiry as may be necessary, to divide the said property according to the best of your skill and judgment in the shares set out in the said decree, and to allot such shares to the several parties. You are hereby authorised to award sums to be paid to any party by any other party for the purpose of equalizing the value of the shares.

Process to compel the attendance before you of any witness, or for the production of any documents, whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of Rs......., being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this......day of...... 11...

*Judge.*

No. 11.

## Notice to Minor Defendant and Guardian. (Or. 32, r. 3.)

*(Title.)*

To

*Minor Defendent.*
*Natural Guardian.*

WHEREAS an application has been presented on the part of the plaintiff in the above suit for the appointment of a guardian for the suit to the minor defendant, you, the said minor, and you (1)......, are hereby required to take notice that unless within ......days from the service upon you of this notice, an application is made to this Court for the appointment of you (1),...... or of some friend of you, the minor, to act as guardian for the suit, the Court will proceed to appoint some other person to act as a guardian to the minor for the purposes of the said suit.

(1) Here insert the name of guardian.

GIVEN under my hand and the seal of the Court, this......day of......11...

*Judge.*

No. 12.

**Notice to opposite party of day fixed for hearing evidence of pauperism. (Or. 33, r. 6.)**

*(Title.)*

To

WHEREAS .....has applied to this Court for permission to institute a suit against.........*in forma pauperis* under Order XXXIII of the Code of Civil Procedure .., ..; and whereas the Court sees no reason to reject the application and whereas the .....day of .....11...has been fixed for receiving such evidence as the applicant may adduce in proof of his pauperism and for hearing any evidence which may be adduced in disproof thereof ;

Notice is hereby given to you under Rule 6 of Order XXXIII that in case you may wish to offer any evidence to disprove the pauperism of the applicant, you may do so on appearing in this Court on the said......day of ......11...

GIVEN under my hand and the seal of the Court, this......day of......11...

*Judge.*

---

No. 13.

**Notice to Surety of his Liability under a Decree. (Section 109.)**

*(Title.)*

To

WHEREAS you......did on .....become liable as surety for the performance of any decree which might be passed against the said .....defendant in the above suit ; and whereas a decree was passed on the......day of......11... against the said defendant for the payment of ....., and whereas application has been made for execution of the said decree against you :

Take notice that you are hereby required on or before the .....day of ......11...to show cause why the said decree should not be executed against you, and if no sufficient cause shall be, within the time specified, shown to the satisfaction of the Court, an order for its execution will be forthwith issued in the terms of the said application.

GIVEN under my hand and the seal of the Court, this......day of...... 11....

*Judge.*

---

## No. 14.

## Register of Civil Suits. (Or. 4, r. 2.)

COURT of the......of......at......

REGISTER OF CIVIL SUITS in the year 11...

| | | Plaintiff. | | | Defendant. | | | Claim. | | | Appearance. | | | Judgment. | | | Appeal. | | Execution. | | | | | Return of execution. | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Date of presentation of plaint. | Number of suit. | Name. | Description. | Place of residence. | Name. | Description. | Place of residence. | Particulars. | Amount or value. | When the cause of action accrued. | Day for parties to appear. | Plaintiff. | Defendant. | Date. | For whom. | For what or, amount. | Date of decision of appeal. | Judgment in appeal. | Date of application. | Date of order. | Against whom. | For what and amount if money. | Amount of costs. | Amount paid into Court. | Arrested. | Minute of other return than Payment or Arrest, and date of every Return. |

NOTE.—Where there are numerous plaintiffs or numerous defendants, the name of the first plaintiff only, or the first defendant only, as the case may be, need be entered in the register.

## No. 15.

## Register of Appeals. (Or. 40, r. 9.)

Court (*or* High Court) at......

Register of Appeals from Decrees in the year 11....

| | | Appellant. | | | Respondent. | | | Decree appealed from. | | | | Appearance. | | | Judgment. | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Date of memorandum. | Number of appeal. | Name. | Description. | Place of residence. | Name. | Description. | Place of residence. | Of what Court. | Number of Original Suit. | Particulars. | Amount or value. | Day for parties to appear. | Appellant. | Respondent. | Date. | Confirmed, reversed or varied. | For what or, amount. |

## THE SECOND SCHEDULE.

*(See Section 119.)*

ENACTMENTS REPEALED.

| 1 | 2 | 3 | 4 |
|---|---|---|---|
| Year. | No. | Subject or short title. | Extent of repeal. |
| 1010 | I | A Regulation for extending the powers vested in the Munsiffs, and for defining their jurisdiction. | Section 7 and so much of Section 17 clause (5) as relates to interest for money. |
| 1010 | IV | A Regulation for extending the jurisdiction of Zillah Judges. | So much of Section 21 as relates to interest for money. |
| 1065 | II | The Code of Civil Procedure. | The whole Regulation. |
| 1070 | II | A Regulation to amend the Code of Civil Procedure. | Sections 2 to 6 both inclusive. |
| 1086 | V | The Civil Procedure Code Amendment Regulation, 1086. | The whole Regulation. |
| 1087 | VI | The Court Fees Regulation. | Section 12 and Article VII of Schedule II. |

## [SCHEDULE.

*(See Section 2.)*

ENACTMENTS REPEALED.

| 1 | 2 | 3 | 4 |
|---|---|---|---|
| Year. | Number. | Subject or short title. | Extent of repeal. |
| 1061 | IV | A Regulation to authorise execution in Travancore of the decrees passed by the Civil Courts in British India and Cochin State. | The whole Regulation. |
| 1070 | II | A Regulation to amend the Code of Civil Procedure. | So much as has not been repealed except Section 11. |
| 1088 | | Proclamation defining how the Government of His Majesty should sue and be sued in the Courts of Travancore. | The whole Proclamation. ] (a) |

(a) Added by Regulation III of 1101.

## TABLE A.

Comparative Table of the Sections of Regulation II of 1065, with the corresponding Sections or Orders and Rules of the present Regulation and the Sections or Orders and Rules of the British Indian Civil Procedure Code, Act V of 1908, noted against each.

| Section of Regulation II of 1065. | Section or Order and Rule of the Regulation | Section or Order and Rule of the British Indian Act V of 1908. |
|---|---|---|
| 1 | Section 1 | Section 1 |
| 2 | ,, 2 | ,, 2 |
| "Chapter" | Omitted | ... |
| "district" / "District Court" | Sections 2 (4) & 3 | Sections 2 (4) and 3 |
| "pleader" | Section 2 (14) | Section 2 (15) |
| "Government pleader" | ,, 2 (7) | ,, 2 (7) |
| "decree" | ,, 2 (2) | ,, 2 (2) |
| "Order" | ,, 2 (13) | ,, 2 (14) |
| "Judgment" | ,, 2 (9) | ,, 2 (9) |
| "Judge" | ,, 2 (8) | ,, 2 (8) |
| "Judgment-debtor" | ,, 2 (10) | ,, 2 (10) |
| "Decree-holder" | ,, 2 (3) | ,, 2 (3) |
| "written" | Omitted | ... |
| "signed" | Section 2 (19) | Section 2 (20) |
| "foreign Court" | ,, 2 (5) | ,, 2 (5) |
| "foreign judgment" | ,, 2 (6) | ,, 2 (6) |
| "public officer" | ,, 2 (16) | ,, 2 (17) |
| "immovable property" | Omitted | ... |
| 3 | Sections 119, 120, 121, 118 | Sections 156, 157, 158, 154 |
| 4 | Section 6 | Section 7 |
| 5 | Omitted | ... |
| 6 | ,, 7 (1) | ... |
| 7 | Section 7 | Section 9 |
| 7-A | ,, 8 | New |
| 8 | ,, 9 | Section 10 |
| 9 | Sections 10, 13 | Sections 11, 14 |
| 10 | ,, 12 | Section 13 |
| 11 | ,, 14 | ,, 15 |
| 12 | ,, 15 | ,, 16 |
| 13 | ,, 17 | ,, 18 |
| 14 | ,, 19 | ,, 20 |
| 15 | ,, 18 | ,, 19 |
| 16 | ,, 16 | ,, 17 |
| 17 | Omitted | ... |
| 18 | Do. | ... |
| 19 & 20 | Sections 21 and 22 | Sections 22 and 23 (1) & (2) |
| 21 | Section 23 | Section 24 |
| 22 | Or. 1, rr. 1 & 4 | Or. 1, rr. 1 & 4 |
| 23 | ,, r. 10 (1) | ,, r. 10 (1) |
| 24 | ,, rr. 3 & 4 | ,, rr. 3 & 4 |
| 25 | ,, r. 6 | ,, r. 6 |
| 26 | ,, r. 8 (1) | ,, r. 8 |
| 27 | ,, r. 9 | ,, r. 9 |
| 28 | ,, rr. 10 (2) & (3), 8 (2), 11 | ,, rr. 10 (2) & (3), and 11 |

TABLE A—(*Contd.*)

| Section of Regulation II of 1065. | Section or Order and Rule of the Regulation. | Section or Order and Rule of the British Indian Act V of 1908. |
|---|---|---|
| 29 | Or. 1, r. 10 (4) | Or. 1, r. 10 (4) |
| 30 | " r. 13 | " r. 13 |
| 31, paras 1 and 2 | " r. 12 | " r. 12 |
| 31, para 3 | Omitted | ... |
| 32 | Or. 3, r. 1 | Or. 3, r. 1 |
| 33 | " r. 2 | " r. 2 |
| 34 | " r. 3 | " r. 3 |
| 35 | " r. 4 | " r. 4 |
| 36 | " r. 5 | " r. 5 |
| 37 | " r. 6 | " r. 6 |
| 38 | Or. 2, r. 1 | Or. 2, r. 1 |
| 39 | " r. 2 | " r. 2 |
| 40 | " r. 4 | " r. 4 |
| 41 | " rr. 3 (1), 6, 3 (2) | " rr. 3 (1), 6, 3 (2) |
| 42 | Cf. " r. 7 | Cf. " r. 7 |
| 43 | Omitted | ... |
| 44 | Section 24 & Or. 4, r. 1 (1) | Section 26 & Or. 4, r. 1 |
| 45 | Omitted | ... |
| 46 | Or. 7, rr. 1 & 2, & 4 to 6 | Or. 7, rr. 1 & 2, and 4 to 6 |
| 47 | Or. 6, rr. 14 & 15 (1) | Or. 6, rr. 14 & 15 (1) |
| 48 | " r. 15 (2), (3) | " r. 15 (2), (3) |
| 49 | Cf. Or. 6, r. 17; Section 117 | Cf. Or. 6, r. 17; Section 153 |
| 50 | Or. 7, r. 11; Or. 6, r. 18 | Or. 7, r. 11; Or. 6, r. 18 |
| 51 | " r. 12 | " r. 12 |
| 52 | " r. 13 | " r. 13 |
| 53 | " r. 10 | " r. 10 |
| 54 | " r. 9; Or. 4, r. 2 | " r. 9; Or. 4, r. 2 |
| 55 | " r. 14 | " r. 14 |
| 56 | " r. 15 | " r. 15 |
| 57 | " r. 16 | " r. 16 |
| 58 | " r. 17 | " r. 17 |
| 59 | " r. 18 | " r. 18 |
| 60 | Section 25; Or. 5, r. 1 (1) | Sec. 27; Or. 5, r. 1 (1) |
| 61 | Or. 5, r. 2 | Or. 5, r. 2 |
| 62 | " r. 3 | " r. 3 |
| 63 | " r. 4 | " r. 4 |
| 64 | " r. 5 | " r. 5 |
| 65 | " r. 6 | " r. 6 |
| 66 | " r. 7 | " r. 7 |
| 67 | " r. 8 | " r. 8 |
| 68 | " r. 9 | " r. 9 |
| 69 | " r. 10 | " r. 10 |
| 70 | " r. 11; Cf. Or. 30, r. 3 | " r. 11; Cf. Or. 30, r. 3 |
| 71 | " r. 12 | " r. 12 |
| 72 | " r. 13 | " r. 13 |
| 73 | " r. 14 | " r. 14 |
| 74 | " r. 15 | " r. 15 |
| 75 | " r. 16 | " r. 16 |
| 76 | " r. 17 | " r. 17 |
| 77 | " r. 18 | " r. 18 |
| 78 | " rr. 19 & 20 (1) | " rr. 19 & 20 (1) |
| 79 | " r. 20 (2) | " r. 20 (2) |
| 80 | " r. 20 (3) | " r. 20 (3) |
| 81 | " rr. 21 & 22 | Sec. 28 (1); Or. 5, r. 21; Sec. 28 (2); Or. 5, r. 22 |

## TABLE A—(*Contd.*)

| Section of Regulation II of 1065. | Section or Order and Rule of the Regulation. | Section or Order and Rule of the British Indian Act V of 1908. |
|---|---|---|
| 82, 83 | Or. 5, r. 23 | Or. 5, r. 24 |
| 84 | „ r. 24 | „ r. 25 |
| 85 | „ r. 28 (1), (2) | „ r. 30 (1), (2) |
| 86 | „ r. 28 (3) | „ r. 30 (3) |
| 87 | Or. 46, r. 1 | Or. 48, r. 1 |
| 88 | Section 106 ; Or. 46, r. 2 | Section 142 ; Or. 48, r. 2 |
| 89 | „ 107 | „ 143 |
| 90 | Or. 9, r. 1 | Or. 9. r. 1 |
| 91 | „ r. 2 | „ r. 2 |
| 92 | „ r. 3 | „ r. 3 |
| 93 | „ r. 4 | „ r. 4 |
| 94 | „ r. 5 | „ r. 5 |
| 95 | „ r. 6 | „ r. 6 |
| 96 | „ r. 7 | „ r. 7 |
| 97 | „ r. 8 | „ r. 8 |
| 98 | „ r. 9 | „ r. 9 |
| 99 | Omitted | ... |
| 100 | Or. 9, r. 10 | Or 9, r. 10 |
| 101 | „ r. 11 | „ r. 11 |
| 102 | „ r. 12 | „ r. 12 |
| 103 | „ r. 13 | „ r. 13 |
| 104 | „ r. 14 | „ r. 14 |
| 105 | Or. 8, r. 1 | Or. 8, r. 1 |
| 106 | „ r. 6 (1), (2) | „ r. 6 (1), (2) |
| 107 | „ r. 9 | „ r. 9 |
| 108 | „ r. 10 | „ r. 10 |
| 109 | Cf. Or. 6, r. 2 | Cf. Or. 6, r. 2 |
| 110 | Cf. „ rr. 14, 15 | Cf. „ rr. 14, 15 |
| 111 | Cf. „ rr. 15, 17 | Cf. „ rr. 15, 17 |
| 112 | Or. 10, r. 1 | Or. 10, r. 1 |
| 113 | „ r. 2 | „ r. 2 |
| 114 | „ r. 3 | „ r. 3 |
| 115 | „ r. 4 | „ r. 4 |
| 116 | Or. 11, r. 1 | Or. 11, r. 1 |
| 117 | Cf. Or. 46, r. 2 | Cf. Or. 46, r. 2 |
| 118 | Or. 11, r. 3 | Or. 11, r. 3 |
| 119 | „ r. 5 | „ r. 5 |
| 120 | „ r. 6 | „ r. 6 |
| 121 | „ r. 8 | „ r. 8 |
| 122 | „ r. 11 | „ r. 11 |
| 123 | Or. 12, r. 2 | Or. 12, r. 2 |
| 124 | Or. 11, rr. 12, 13 | Or. 11, rr. 12, 13 |
| 125 | „ r. 14 | „ r. 14 |
| 126 | „ r. 15 | „ r. 15 |
| 127 | „ r. 17 | „ r. 17 |
| 128 | „ r. 18 (1) | „ r. 18 (1) |
| 129 | „ r. 18 (2) | „ r. 18 (2) |
| 130 | „ r. 20 | „ r. 20 |
| 131 | „ r. 21 | „ r. 21 |
| 132 | Or. 13, r. 10 | Or. 13, r. 10 |
| 133 | „ r. 1 (1) | „ r. 1 (1) |
| 134 | „ r. 2 | „ r. 2 |
| 135 | „ rr. 1 (2), 3 | „ rr. 1 (2), 3 |
| 136 | „ rr. 4, 5 | „ rr. 4, 5 |

TRIVANDRUM PUBLIC LIBRARY



## TABLE A—(*Contd.*)

| Section of Regulation II of 1065. | Section or Order and Rule of the Regulation. | Section or Order and Rule of the British Indian Act V of 1908. |
|---|---|---|
| 137 | Or. 13, rr. 6, 7 | Or. 13, rr. 6, 7 |
| 138 | ,, r. 8 | ,, r. 8 |
| 139 | ,, r. 9 | ,, r. 9 |
| 140 | ,, r. 11 | ,, r. 11 |
| 141 | Or. 14, rr. 1, 2 | Or. 14, rr. 1, 2 |
| 142 | ,, r. 3 | ,, r. 3 |
| 143 | ,, r. 4 | ,, r. 4 |
| 144 | ,, r. 5 | ,, r. 5 |
| 145 | ,, r. 6 | ,, r. 6 |
| 146 | ,, r. 7 | ,, r. 7 |
| 147 | Or. 15, r. 1 | Or. 15, r. 1 |
| 148 | ,, r. 2 | ,, r. 2 |
| 149 | ,, r. 3 | ,, r. 3 |
| 150 | ,, r. 4 | ,, r. 4 |
| 151 | Or. 17, r. 1 | Or. 17, r. 1 |
| 152 | ,, r. 2 | ,, r. 2 |
| 153 | ,, r. 3 | ,, r. 3 |
| 154 | Or. 16, r. 1 | Or. 16, r. 1 |
| 155 | ,, r. 2 (1) & (3) | ,, r. 2 (1) & (3) |
| 156 | ,, r. 3 | ,, r. 3 |
| 157 | ,, r. 4 | ,, r. 4 |
| 158 | ,, r. 5 | ,, r. 5 |
| 159 | ,, r. 6 | ,, r. 6 |
| 160 | ,, r. 7 | ,, r. 7 |
| 161 | ,, r. 8 | ,, r. 8 |
| 162 | ,, r. 9 | ,, r. 9 |
| 163 | ,, r. 10 | ,, r. 10 |
| 164 | ,, r. 11 | ,, r. 11 |
| 165 | ,, r. 12 | ,, r. 12 |
| 166 | ,, r. 14 | ,, r. 14 |
| 167 | ,, r. 15 | ,, r. 15 |
| 168 | ,, r. 16 (1) | ,, r. 16 (1) |
| 169 | ,, rr. 17, 18 | ,, rr. 17, 18 |
| 170 | Cf. Or. 16, r. 17 | Cf. Or. 16, r. 17 |
| 171 | Or. 16, r. 19 | Or. 16, r. 19 |
| 172 | ,, r. 20 | ,, r. 20 |
| 173 | ,, r. 21 | ,, r. 21 |
| 174 | Or. 18, rr. 2 (1), 1 | Or. 18, rr. 2 (1), 1 |
| 175 | ,, rr. 2 (2), (3) & 3 | ,, rr. 2 (2), (3) & 3 |
| 176 | ,, r. 4 | ,, r. 4 |
| 177 | ,, r. 5 | ,, r. 5 |
| 178 | ,, r. 6 | ,, r. 6 |
| 179 | ,, r. 7 | ,, r. 8 |
| 180 | ,, r. 8 | ,, r. 9 |
| 181 | ,, r. 9 | ,, r. 10 |
| 182 | ,, r. 10 | ,, r. 11 |
| 183 | ,, r. 11 | ,, r. 12 |
| 184 | ,, r. 12 | ,, r. 13 |
| 185 | ,, r. 13 | ,, r. 14 |
| 186 | ,, r. 14 | ,, r. 15 |
| 187 | ,, r. 15 | ,, r. 16 |
| 188 | ,, r. 16 | ,, r. 17 |
| 189 | Omitted | ... |
| 190 | Or. 19, r. 2 | Or. 19, r. 2 |

TABLE A.—(*Contd.*)

| Section of Regulation II of 1065. | Section or Order and Rule of the Regulation. | Section or Order and Rule of the British Indian Act V of 1908. |
|---|---|---|
| 191 | Or. 19, r. 3 | Or. 19, r. 3 |
| 192 | Section 103 | Section 139 |
| 193 | „ 30; Or. 20, r. 1 (1) | Section 33; Or. 20, r. 1 |
| 194 | Or. 20, r. 1 (2) | Or. 20, r. 2 |
| 195 & 196 | Cf. Section 102; Or. 20, r. 2 (1) | Cf. Section 137 |
| 197 | Or. 20, r. 3 | Or. 20, r. 3 |
| 198 | „ r. 4 | „ r. 4 |
| 199 | „ r. 5 | „ r. 5 |
| 200 | „ r. 7 | „ r. 7 |
| 201 | „ r. 6 (1),(2); Section 116 | „ r. 6 (1) (2) Sec. 152 |
| 202 | „ r. 9 | „ r. 9 |
| 203 | „ r. 10 | „ r. 10 |
| 204 | Section 31 | Section 34 |
| 205 | Or. 20, r. 11 | Or. 20, r. 1: |
| 206 } 207 } | „ r. 12 (1); Section 2 (19) | „ r. 12 (1) Sec. 2 (12) |
| 208 | „ r. 14 | „ r. 14 |
| 209 | „ r. 15 | „ r. 15 |
| 210 | „ r. 16 | „ r. 16 |
| 211 | „ r. 19 | „ r. 19 |
| 212 | „ r. 20 | „ r. 20 |
| 213 } 214 } 215 } | Section 32 | Section 35 |
| 216 | Or. 20, r. 6 (3) | Or. 20, r. 6 (3) |
| 217 | Cf. Section 32 | Cf. Section 35 |
| 218 | Section 35, 36, 37; Or. 21, r. 4 | Sections 38, 39, 41; } Or. 21, r. 5 } |
| 219 | Or. 21, r. 5 | „ r. 6 |
| 220 | „ r. 6 | „ r. 7 |
| 221 | „ r. 7 | „ r. 8 |
| 222 | Section 38 | Section 42 |
| 223 | Or. 21, rr. 8, 9; Section 41 | Or. 21, rr. 10, 21; Section 48 |
| 224 | Or. 21, r. 13 | Or. 21, r. 15 |
| 225 | „ r. 14 | „ r. 16 |
| 226 | Section 42 | Section 49 |
| 227 | Section 43 | „ 50 |
| 228 | Or. 21, r. 9 (2) | Or. 21, r 11, (2) |
| 229 | „ r. 10 | „ r. 12 |
| 230 | „ r. 11 | „ r. 13 |
| 231 | „ r. 12 | „ r. 14 |
| 232 | Omitted | ... |
| 233 | Or. 21, r. 24 (1), (2) | Or. 21, r. 26 (1), (2) |
| 234 | „ r. 24 (3) | „ r. 26 (3) |
| 235 | „ r. 25 | „ r. 27 |
| 236 | „ r. 26 | „ r. 28 |
| 237 | „ r. 27 | „ r. 29 |
| 238 | Section 40 | Section 47 |
| 239 | Or. 21, r. 15 | Or. 21, r. 17 |
| 240 | Section 48 | Section 56 |
| 241 | Or. 21, r 35 | Or. 21, r. 37 |
| 242 | „ r. 16 | „ r. 18 |
| 243 | „ r. 17 | „ r. 19 |

TABLE A.—(*Contd.*)

| Section of Regulation II of 1065. | Section or Order and Rule of the Regulation. | Section or Order and Rule of the British Indian Act V of 1908. |
|---|---|---|
| 244 | Or. 21, r. 20 (1) | Or. 21, r. 22 (1) |
| 245 | ,, r. 21 | ,, r. 23 |
| 246 | ,, r. 22 (1) | ,, r. 24 (1) |
| 247 | ,, rr. 22 (2), (3), 23 (1) | ,, rr 24 (2), (3), 25 (1) |
| 248 | Section 45 | Section 52 |
| 249 | ,, 109 | ,, 145 |
| 250 | Or. 21, r. 28 | Or. 21, r. 30 |
| 251 | ,, r. 40 | ,, r. 42 |
| 252 | ,, r. 9 (1) | ,, r. 11 (1) |
| 253 | ,, r. 1 (1) | ,, r. 1 (1) |
| 254 | Omitted | ... |
| 255 | Or. 21, r. 2 | Or. 21, r. 2 |
| 256 | ,, r. 29 | ,, r. 31 |
| 257 | ,, r. 30 (1), (3) & (4) | ,, r. 32 (1), (3) & (4) |
| 258 | ,, r. 32 (1) to (4) | ,, r. 34 (1) to (4) |
| 259 | ,, r. 32 (5) | ,, r. 34 (5) |
| 260 | ,, r. 33 (1) | ,, r. 35 (1) |
| 261 | ,, r. 34 | ,, r. 36 |
| 262 | Section 46 | Section 54 |
| 263 | ,, 52 | ,, 60 |
| 264 | Or. 21, r. 39 | Or. 21, r. 41 |
| 265 | ,, r. 44 | ,, r. 46 |
| 266 | ,, r. 41 | ,, r. 43 |
| 267 | ,, r. 49 | ,, r. 51 |
| 268 | Section 54 | Section 62 |
| 269 | Or. 21, r. 50 | Or. 21, r. 52 } |
| 270 | ,, r. 51 (1), (2), (4) & (5) | ,, r. 53 (1), (2), (4) & (5) } |
| 271 | Or. 21, r. 52 | ,, r. 54 |
| 272 | ,, r. 53 | ,, r. 55 |
| 273 | Section 56 | Section 64 |
| 274 | Or. 21, r. 54 | Or. 21, r. 56 |
| 275 | ,, r. 56 | ,, r. 58 |
| 276 | ,, r. 57 | ,, r. 59 |
| 277 | ,, r. 58 | ,, r. 60 |
| 278 | ,, r. 59 | ,, r. 61 |
| 279 | ,, r. 60 | ,, r. 62 |
| 280 | ,, r. 61 | ,, r. 63 |
| 281 | ,, r. 62 | ,, r. 64 |
| 282 | Section 55 (1) | Section 63 (1) |
| 283 | Or. 21, r. 63 | Or. 21, r. 65 |
| 284 | ,, r. 64 (1), (2) & (4) | ,, r. 66 (1), (2) & (4) |
| 285 | Omitted | ... |
| 286 | Or. 21, r. 65 (1) & (2) | ,, r. 67 (1) & (2) |
| 287 | ,, r. 66 | ,, r. 68 |
| 288 | ,, r. 67 | ,, r. 69 |
| 289 | ,, r. 70 | ,, r. 73 |
| 290 | ,, r. 68 | ,, r. 71 |
| 291 | ,, r. 69 | ,, r. 72 |
| 292 | Section 59 | Section 73 |
| 293 | Or. 21, r. 73 | Or. 21, r 76 |
| 294 | ,, r. 74 (1) & (2) | ,, r. 77 (1) & (2) |
| 295 | ,, r. 75 | ,, r. 78 |

TABLE A.—(*Contd.*)

| Section of Regulation II of 1065. | Section or Order and Rule of the Regulation. | Section or Order and Rule of the British Indian Act V of 1908. |
|---|---|---|
| 296 | Or. 21, r. 76 (1) | Or. 21, r. 79 (1) |
| 297 | ,, r. 76 (2) | ,, r. 79 (2) |
| 298 | ,, r. 76 (3) | ,, r. 79 (3) |
| 299 | ,, r. 77 | ,, r. 80 |
| 300 | ,, r. 78 | ,, r. 81 |
| 301 | ,, r. 79 | ,, r. 82 |
| 302 | ,, r. 80 (1) & (2) | ,, r. 83 (1) & (2) |
| 303 | ,, r. 81 (1) | ,, r. 84 (1) |
| 304 | ,, r. 82, without the Proviso. | ,, r. 85 without the Proviso. |
| 305 | ,, r. 83 | ,, r. 86 |
| 306 | ,, r. 84 | ,, r. 87 |
| 307 | ,, r. 85 | ,, r. 88 |
| 307-A | ,, r. 86 | ,, r. 89 |
| 308 | ,, r. 87 | ,, r. 90 |
| 309 | ,, r. 89 | ,, r. 92 |
| 310 | ,, r. 88 | ,, r. 91 |
| 311 | Cf. Or. 21, r. 89 (1) | Cf. Or. 21, r. 92 (1) |
| 312 | Or. 21, r. 90 | Or. 21, r. 93 |
| 313 | ,, r. 91 ; Section 57 | ,, r. 94 ; Section 65 |
| 314 | Section 58 | Section 66 |
| 315 | Or. 21, r. 92 | Or. 21, r. 95 |
| 316 | ,, r. 93 | ,, r. 96 |
| 317 | ,, r. 94 | ,, r. 97 |
| 318 | Section 60 | Section 74 |
| 319 | Or. 21, r. 95 | Or. 21, r. 98 |
| 320 | ,, r. 96 | ,, r. 99 |
| 321 | ,, rr. 97, 98 & 100 | ,, rr. 100, 101 & 103 |
| 322 | ,, r. 99 | ,, r. 102 |
| 323 | Cf. Or. 21, rr. 94 & 95 | Cf. Or. 21, rr. 97 & 98 |
| 324 | Cf. ,, rr. 94, 96, 98 & 100 | Cf. ,, rr. 97, 99, 101 & 103 |
| 325 | Section 47 | Section 55 |
| 326 | Or. 21, r. 36 | Or. 21, r. 38 |
| 327 | ,, r. 38 | ,, r. 40 |
| 328 | Section 49 | Section 57 |
| 329 | Or. 21, r. 37 (1) to (4) | Or. 21, r. 39 (1) to (4) |
| 330 | ,, r. 37 (5) | ,, r. 39 (5) |
| 331 | Section 50 (1) Proviso. | Section 58 (1) Proviso |
| 332 | Section 50 (1) | Section 58 (1) |
| 333 } 334 } 335 } 336 } | Omitted. | |
| 337 to 345 | Repealed by the Insolvency Regulation, VIII of 1090. | |
| 346 | Or. 22, r. 1 | Or. 22, r. 1 |
| 347 | ,, r. 2 | ,, r. 2 |
| 348 } 349 } | ,, r. 3 (1) | ,, r. 3 (1) |
| 350 | ,, r. 3 (2) | ,, r. 3 (2) |
| 351 | ,, r. 5 | ,, r. 5 |
| 352 | ,, r. 4 | ,, r. 4 |
| 353 | ,, r. 7 | ,, r. 7 |
| 354 | ,, r. 8 | ,, r. 8 |

TABLE A.—(*Contd.*)

| Section of Regulation II of 1065. | Section or Order and Rule of the Regulation. | Section or Order and Rule of the British Indian Act V of 1908. |
|---|---|---|
| 355 | Or. 22, r. 9 | Or. 22, r. 9 |
| 356 | ,, r. 10 (1) | ,, r. 10 (1) |
| 357 | Or. 23, r. 1 | Or. 23, r. 1 |
| 358 | ,, r. 2 | ,, r. 2 |
| 359 | ,, r. 3 | ,, r. 3 |
| 360 | ,, r. 4 | New |
| 361 | Or. 24, r. 1 | Or. 24, r. 1 |
| 362 | ,, r. 2 | ,, r. 2 |
| 363 | ,, r. 3 | ,, r. 3 |
| 364 | ,, r. 4 | ,, r. 4 |
| 365 | Or. 25, r. 1 (1) | Or. 25, r. 1 (1) |
| 366 | ,, r. 2 | ,, r. 2 |
| 367 | ,, r. 1 (2) | ,, r. 1 (2) |
| 368 | Or. 26, r. 1 | Or. 26, r. 1 |
| 369 | ,, r. 2 | ,, r. 2 |
| 370 | ,, r. 3 | ,, r. 3 |
| 371 | ,, r. 4 | ,, r. 4 |
| 372 | ,, r. 5 | ,, r. 5 |
| 373 | ,, r. 6 | ,, r. 6 |
| 374 | ,, r. 7 | ,, r. 7 |
| 375 | ,, r. 8 | ,, r. 8 |
| 376 | Section 63 | Section 78 |
| 377 | Or. 26, r. 9 | Or. 26, r. 9 |
| 378 | ,, r. 10 (1) & (2) | ,, r. 10 (1) & (2) |
| 379 | ,, r. 11 | ,, r. 11 |
| 380 | ,, r. 12 | ,, r. 12 |
| 381 | ,, r. 13, 14 | ,, r. 13, 14 |
| 382 | ,, r. 15 | ,, r. 15 |
| 383 | ,, r. 16 | ,, r. 16 |
| 384 | ,, r. 17 (1) | ,, r. 17 (1) |
| 385 | ,, r. 18 | ,, r. 18 |
| 386 | Or. 33, r. 1 | Or. 33, r. 1 |
| 387 | Omitted. | ... |
| 388 | Or. 33, r. 2 | Or. 33, r. 2 |
| 389 | ,, r. 3 | ,, r. 3 |
| 390 | ,, r. 5 (a) | ,, r. 5 (a) |
| 391 | ,, r. 4 | ,, r. 4 |
| 392 | ,, r. 5 (b) to (e) | ,, r. 5 (b) to (e) |
| 393 | ,, r. 6 | ,, r. 6 |
| 394 | ,, r. 7 | ,, r. 7 |
| 395 | ,, r. 8 | ,, r. 8 |
| 396 | ,, r. 10 | ,, r. 10 |
| 397 | ,, r. 11 | ,, r. 11 |
| 398 | ,, r. 15 | ,, r. 15 |
| 399 | ,, r. 9 | ,, r. 9 |
| 400 | ,, r. 16 | ,, r. 16 |
| 401 | Section 64 | Section 79 (1) |
| 402 | Or. 27, r. 2 | Or. 27, r. 2 |
| 403 | ,, r. 3 | ,, r. 3 |
| 404 | ,, r. 4 | ,, r. 4 |
| 405 | ,, r. 5 | ,, r. 5 |
| 406 | ,, r. 6 | ,, r. 6 |
| 407 | Or. 5, r. 25 | Or. 5, r. 27 |
| 408 | Or. 27, r. 7 | Or. 27, r. 7 |

TABLE A—(*Contd.*)

| Section of Regulation II of 1065. | Section or Order and Rule of the Regulation. | Section or Order and Rule of the British Indian Act V of 1908. |
|---|---|---|
| 409 | Section 65 | Section 80 |
| 410 | Section 66 (a) | Section 81 (a) |
| 411 | Or. 27, r. 8 (1) | Or. 27, r. 8 (1) |
| 412 | Or. 27, r. 8 (2) | Section r. 8 (2) |
| 413 | Section 66 (b) | Section 81 (b) |
| 414 | Section 67 | Section 82 |
| 415 | Or. 29, r. 1 | Or. 29, r. 1 |
| 416 | ,, rr. 2 & 3 | ,, rr. 2 & 3 |
| 417 | Or. 31, r. 1 | Or. 31, r. 1 |
| 418 | ,, r. 2 | ,, r. 2 |
| 419 | ,, r. 3 | ,, r. 3 |
| 420 | Or. 32, r. 1 | Or. 32, r. 1 |
| 421 | ,, r. 5 (1) | ,, r. 5 (1) |
| 422 | ,, r. 2 | ,, r. 2 |
| 423 | ,, r. 3 (1) | ,, r. 3 (1) |
| 424 | ,, r. 5 (2) | ,, r. 5 (2) |
| 425 | ,, r. 4 (1) | ,, r. 4 (1) |
| 426 | ,, r. 9 (1) | ,, r. 9 (1) |
| 427 | ,, r. 8 | ,, r. 8 |
| 428 | ,, r. 10 (1) | ,, r. 10 (1) |
| 429 | ,, r. 10 (2) | ,, r. 10 (2) |
| 430 | ,, r. 12 (1) | ,, r. 12 (1) |
| 431 | ,, r. 12 (2) & (3) | ,, r. 12 (2) & (3) |
| 432 | ,, r. 12 (4) | ,, r. 12 (4) |
| 433 | ,, r. 12 (5) | ,, r. 12 (5) |
| 434 | ,, r. 13 | ,, r. 13 |
| 435 | ,, r. 14 | ,, r. 14 |
| 436 | ,, rr. 3 (2) & (3) ; 4 (4) | ,, rr. 3 (2) & (3) ; 4 (4) |
| 437 | Cf. Or. 32, r. 4 (1) | Cf. Or. 32, r. 4 (1) |
| 438 | Or. 32, r. 11 (1) | Or. 32, r. 11 (1) |
| 439 | ,, r. 11 (2) | ,, r. 11 (2) |
| 440 | Omitted | — |
| 441 | Or. 32, r. 6 | Cf. ,, r 6 |
| 442 | ,, r. 7 | ,, r. 7 |
| 443 | ,, r. 15 | ,, r. 15 |
| 444 | Or. 28, r. 1 | Or. 28, r. 1 |
| 445 | ,, r. 2 | ,, r. 2 |
| 446 | ,, r. 3 | ,, r. 3 |
| 447 | Or. 5, rr. 26, 27 | Or. 5, rr. 28, 29 |
| 448 | Or. 28, r. 4 | New |
| 449 | Section 68 | Section 88 |
| 450 | Or. 34, r. 1 | Or. 35, r. 1 |
| 451 | ,, r. 2 | ,, r. 2 |
| 452 | ,, r. 4 | ,, r. 4 |
| 453 | ,, r. 5 | ,, r. 5 |
| 454 | ,, r. 6 | ,, r. 6 |
| 455 | ,, r. 3 | ,, r. 3 |
| 456, 457 | Or. 36, r. 1 | Or. 38, r. 1 |
| 458 | ,, r. 2 | ,, r. 2 |
| 459 | ,, r. 3 | ,, r. 3 |
| 460 | ,, r. 4 (1) | ,, r. 4 |
| 461 | ,, r. 4 (2) | New |
| 462, 463 | Or. 36, r. 5 | Or. 38, r. 5 |
| 464 | ,, r. 6 | ,, r. 6 |

## TABLE A—(*Contd.*)

| Section of Regulation II of 1065. | Section or Order and Rule of the Regulation. | Section or Order and Rule of the British Indian Act V of 1908. |
|---|---|---|
| 465 | Or. 36, r. 7 | Or. 38, r. 7 |
| 466 | ,, r. 8 | ,, r. 8 |
| 467 | ,, r. 9 | ,, r. 9 |
| 468 | ,, r. 10 | ,, r. 10 |
| 469 | ,, r. 11 | ,, r. 11 |
| 470 | Section 75 | Section 95 |
| 471 | Or. 37, r. 1 | Or. 39, r. 1 |
| 472 | ,, r. 2 | ,, r. 2 |
| 473 | ,, r. 3 | ,, r. 3 |
| 474 | ,, r. 5 | ,, r. 5 |
| 475 | ,, r. 4 | ,, r. 4 |
| 476 | Cf. Section 75 | Cf. Section 95 |
| 477 | Or. 37, r. 6 | Or. 39, r. 6 |
| 478 | ,, r. 7 | ,, r. 7 |
| 479 | ,, r. 8 | ,, r. 8 |
| 480 | ,, r. 9 | ,, r. 9 |
| 481 | ,, r. 10 | ,, r. 10 |
| 482 | Or. 38, rr. 1 to 3 | Or. 40, rr. 1 to 3 |
| 483 | Or. 38, r. 5 | ,, r. 5 |
| 484 | Omitted. | ... |
| 485 | Or. 39, r. 1 | Sch. 2 para 1 |
| 486 | ,, r. 2 : 1 (*a*) | ,, ,, 2 & 5 (1) (*a*) |
| 487 | ,, r. 3 | ,, ,, 3 |
| 488 } 489 } 490 } | ,, rr. 4, 5 | ,, paras 4, 5 |
| 491 | ,, r. 6 | ,, para 6 |
| 492 | ,, r. 7 | ,, ,, 7 |
| 493 | ,, r. 8 | ,, ,, 8 |
| 494 | ,, r. 9 | ,, ,, 9 |
| 495 | ,, r. 10 | ,, ,, 10 |
| 496 | ,, r. 11 | ,, ,, 11 |
| 497 | ,, r. 12 (a), (b) | ,, ,, 12 (a), (b) |
| 498 | ,, r. 13 | ,, ,, 13 |
| 499 | ,, r. 14 | ,, ,, 14 |
| 500 | ,, r. 15 (1) | ,, ,, 15 (1) |
| 501 | ,, r. 16 | ,, ,, 16 |
| 502 | ,, r. 17 | ,, ,, 17 |
| 503 | ,, r. 19 | ,, ,, 19 |
| 504 | ,, r. 20 | ,, ,, 20 |
| 505 | ,, r. 21 (1) | ,, ,, 21 (1) |
| 506 | Or. 35, r. 1 | Or. 36, r. 1 |
| 507 | ,, r. 2 | ,, r. 2 |
| 508 | ,, r. 3 | ,, r. 3 |
| 509 | ,, r. 4 | ,, r. 4 |
| 510 | ,, r. 5 | ,, r. 5 |
| 511 | Sections 72 & 73 | Section 92 (1) & (2) |
| 512 | Section 76 (1) & (2) | Section 96 (1) & (2) |
| 513 | Or. 40, r. 1 | Or. 41, r. 1 |
| 514 | ,, r. 2 | ,, r. 2 |
| 515 | ,, r. 3 | ,, r. 3 |
| 516 | ,, r. 4 | ,, r. 4 |
| 517 | ,, r. 5 (1) to (3) | ,, r. 5 (1) to (3) |

## TABLE A.—(*Contd.*)

| Section of Regulation II of 1065. | Section or Order and Rule of the Regulation. | Section or Order and Rule of the British Indian Act V of 1908. |
|---|---|---|
| 518 | Or. 40, r. 6 | Or. 41, r. 6 |
| 519 | ,, r. 7 | ,, r. 7 |
| 520 | ,, r. 9 | ,, r. 9 |
| 521 | ,, r. 10 | ,, r. 10 |
| 522 | ,, r. 12 | ,, r. 13 |
| 523 | ,, r. 11 | ,, r. 12 |
| 524 | ,, r. 13 | ,, r. 14 |
| 525 | ,, r. 14 | ,, r. 15 |
| 526 | ,, r. 15 | ,, r. 16 |
| 527 | ,, r. 16 | ,, r. 17 |
| 528 | ,, r. 17 | ,, r. 18 |
| 529 | ,, r. 18 | ,, r. 19 |
| 530 | ,, r. 19 | ,, r. 20 |
| 531 | ,, r. 20 | ,, r. 21 |
| 532 | ,, r. 21 (1) to (3) | ,, r. 22 (1) to (3) |
| 533 | ,, r. 22 | ,, r. 23 |
| 534 | Omitted | ... |
| 535 | Do. | ... |
| 536 | Or. 40, r. 23 | Or. 41, r. 24 |
| 537 | ,, r. 24 | ,, r. 25 |
| 538 | ,, r. 25 | ,, r. 26 |
| 539 | ,, r. 26 | ,, r. 27 |
| 540 | ,, r. 27 | ,, r. 28 |
| 541 | ,, r. 28 | ,, r. 29 |
| 542 | ,, r. 29 | ,, r. 30 |
| 543, 544 | Cf. Section 102 | Cf. Section 137 |
| 545 | Or. 40, r. 30 | Or. 41, r. 31 |
| 546 | ,, r. 31 | ,, r. 32 |
| 547 | Section 78 | Section 99 |
| 548 | Or. 40, r. 34 | Or. 41, r. 35 |
| 549 | ,, r. 35 | ,, r. 36 |
| 550 | ,, r. 36 | ,, r. 37 |
| 551 | Section 85 (2); Or. 22, r. 11 | Section 107 (2); Or. 22, r. 11 |
| 552 | Section 108 (1) | Section 144 (1) |
| 553 | ,, 79 | ,, 100 |
| 554 | ,, 80 | ,, 101 |
| 555 | Omitted | Cf. Section 102 |
| 556 | Section 86 | Section 108 |
| 557 | Section 82; Or. 42, r. 1 | Section 104; Or. 43, r. 1 |
| 558 | Section 84 | Section 106 |
| 559 | Or. 42, r. 2 | Or. 43, r. 2 |
| 560 | Section 83 (1) | Section 105 (1) |
| 561 | Or. 43, r. 1 | Or. 44, r. 1 |
| 562 | ,, r. 2 | ,, r. 2 |
| 563 | Or. 44, r. 1 | Or. 46, r. 1 |
| 564 | ,, r. 2 | ,, r. 2 |
| 565 | ,, r. 3 | ,, r. 3 |
| 566 | ,, r. 4 | ,, r. 4 |
| 567 | ,, r. 5 | ,, r. 5 |
| 568 | Section 89 | Section 115 |
| 569 | Section 88; Or. 45, r. 1 | Section 114; Or. 47, r. 1 |

## TABLE A.—(*Concld.*)

| Section of Regulation II of 1065. | Section or Order and Rule of the Regulation. | Section or Order and Rule of the British Indian Act V of 1908. |
|---|---|---|
| 570 | Or. 46, r. 2 | Or. 47, r. 2 |
| 571 | „ r. 3 | „ r. 3 |
| 572 | „ r. 4 | „ r. 4 |
| 573 | „ r. 5 | „ r. 5 |
| 574 | „ r. 6 | „ r. 6 |
| 575 | „ rr. 7 & 9 | „ rr. 7 & 9 |
| 576 | „ r. 8 | „ r. 8 |
| 577 | Section 97 | Section 132 |
| 578 | Section 98 | Section 133 |
| 579 | Section 122 | New |
| 580 | Section 109 (1) & (2) | Section 135 (1) & (2) |
| 581 | Omitted | |
| 582 | Or. 46, r. 3 | Or. 48, r. 3 |
| 583 | Section 104 | Section 140 |
| 584 | Section 105 | „ 141 |
| 585 | Section 101 | „ 136 |
| 586 | Cf. Section 34 | „ 37 |
| 587 | Omitted | ... |
| 588 | Section 26 | Section 29 |
| 589 | Omitted | ... |
| 590 | Section 128 | New |
| 591 | Section 91 | Section 122 |

## TABLE B.

Comparative Table of the Sections and Orders and Rules of the Regulation with the corresponding Sections of Regulation II of 1065 and the Sections and Orders and Rules of the British Code noted against each.

| Section and Order and Rule of the Regulation. | Section of the Code, Regulation II of 1065. | Section and Order and Rule of the British Indian Code, Act V of 1908. |
|---|---|---|
| Section 1 | Section 1 | Section 1 |
| „ 2 | „ 2 | „ 2 |
| „ 2 (1) | New | „ 2 (1) |
| „ 2 (2) | "decree" | „ 2 (2) |
| „ 2 (3) | "Decree-holder" | „ 2 (3) |
| „ 2 (4) | "district" | „ 2 (4) |
| „ 2 (5) | "foreign Court" | „ 2 (5) |
| „ 2 (6) | "foreign judgment" | „ 2 (6) |
| „ 2 (7) | "Government pleader" | „ 2 (7) |
| „ 2 (8) | "Judge" | „ 2 (8) |
| „ 2 (9) | "Judgment" | „ 2 (9) |
| „ 2 (10) | "Judgment-debtor" | „ 2 (10) |
| „ 2 (11) | New | „ 2 (11) |
| „ 2 (12) | Explanation to Section 206 | „ 2 (12) |
| „ 2 (13) | "Order" | „ 2 (14) |
| „ 2 (14) | "pleader" | „ 2 (15) |

TABLE B.—(*Contd.*)

| Section and Order and Rule of the Regulation. | Section of the Code, Regulation II of 1065. | Section or Order and Rule of the British Indian Code, Act V of 1908. |
|---|---|---|
| Section 2 (15) | New | Section 2 (16) |
| ,, 2 (16) | "public officer" | ,, 2 (17) |
| ,, 2 (17) | New | ,, 2 (18) |
| ,, 2 (18) | New | ,, 2 (19) |
| ,, 2 (19) | "signed" | ,, 2 (20) |
| ,, 3 | "District Court" | ,, 3 |
| ,, 4 | New | ,, 4 |
| ,, 5 | New | ,, 6 |
| ,, 6 | Section 4 | ,, 7 |
| ,, 7 | ,, 7 | ,, 9 |
| ,, 8 | ,, 7-A | ,, New |
| ,, 9 | ,, 8 | ,, 10 |
| ,, 10 | Section 9 | ,, 11 |
| ,, 11 | New | ,, 12 |
| ,, 12 | 10 | ,, 13 |
| ,, 13 | Section 9 Explanation VI | ,, 14 |
| ,, 14 | ,, 11 | ,, 15 |
| ,, 15 | ,, 12 | ,, 16 |
| ,, 16 | ,, 16 | ,, 17 |
| ,, 17 | ,, 13 | ,, 18 |
| ,, 18 | ,, 15 | ,, 19 |
| ,, 19 | ,, 14 | ,, 20 |
| ,, 20 | New | ,, 21 |
| ,, 21 | ,, 17 | ,, 22 |
| ,, 22 | ,, 20 | ,, 23 (1) & (2) |
| ,, 23 | ,, 21 | ,, 24 (1) & (2) |
| ,, 24 | ,, 44 | ,, 26 |
| ,, 25 | ,, 60 | ,, 27 |
| ,, 26 | ,, 588 | ,, 29 |
| ,, 27 | New | ,, 30 |
| ,, 28 | Do. | ,, 31 |
| ,, 29 | ,, | ,, 32 |
| ,, 30 | ,, 193 | ,, 33 |
| ,, 31 | ,, 204 | ,, 34 |
| ,, 32 (1) | ,, 215 | ,, 35 (1) |
| ,, 32 (2) | ,, 215, Proviso | ,, 35 (2) |
| ,, 32 (3) | Cf. Sec. 217 | ,, 35 (3) |
| ,, 33 | New | ,, 26 |
| ,, 34 | Section 586, paragraph 2 | ,, 37 |
| ,, 35 | ,, 218 ,, 1 | ,, 38 |
| ,, 36 | ,, 218 ,, 2 & 3 | ,, 39 |
| ,, 37 | ,, 218 ,, 4 | ,, 41 |
| ,, 38 | ,, 222 | ,, 42 |
| ,, 39 | New | ,, 46 |
| ,, 40 | Section 288 | ,, 47 |
| ,, 41 | Section 228, paragraphs 3 & 4 | ,, 48 |
| ,, 42 | ,, 226 | ,, 49 |
| ,, 43 | ,, 227 | ,, 50 |
| ,, 44 | New | ,, 51 |
| ,, 45 | Section 248 | ,, 52 |
| ,, 46 | ,, 263 | ,, 54 |
| ,, 47 | ,, 325 | ,, 55 |
| ,, 48 | ,, 240 | ,, 56 |
| ,, 49 | ,, 328 | ,, 57 |

## TABLE B.—(*Contd.*)

| Section and Order and Rule of the Regulation. | Section of the Code, Regulation II of 1065. | Section and Order and Rule of the British Indian Code, Act V of 1908. |
|---|---|---|
| Section 50 | Sections 332 & 331 | Section 58 |
| ,, 51 | New | ,, 59 |
| ,, 52 | Section 263 | ,, 60 |
| ,, 53 | New | ,, 61 |
| ,, 54 | Section 268 | ,, 62 |
| ,, 55 | ,, 282 | ,, 63 |
| ,, 56 | ,, 278 | ,, 64 |
| ,, 57 | Cf. Section 313 | ,, 65 |
| ,, 58 | Section 314 | ,, 66 |
| ,, 59 | ,, 292 | ,, 73 |
| ,, 60 | ,, 318 & 319 | ,, 74 |
| ,, 61 | New | ,, 75 |
| ,, 62 | New | ,, 77 |
| ,, 63 | Section 376 | ,, 78 |
| ,, 64 | ,, 401 | ,, 79 (1) |
| ,, 65 | ,, 409 | ,, 80 |
| ,, 66 | Sections 410 & 413 | ,, 81 |
| ,, 67 | Section 414 | ,, 82 |
| ,, 68 | ,, 449 | ,, 88 |
| ,, 69 | New | ,, 89 (1) |
| ,, 70 | New | ,, 90 |
| ,, 71 | New | ,, 91 |
| ,, 72 } | Section 511 | ,, 92 (1) |
| ,, 73 } | | ,, 92 (2) |
| ,, 74 } | | ,, 94 |
| ,, 75 | Sections 470 & 476 | ,, 95 |
| ,, 76 | Section 512 | ,, 96 |
| ,, 77 | New | ,, 97 |
| ,, 78 | Section 547 | ,, 99 |
| ,, 79 | ,, 553 | ,, 100 |
| ,, 80 | ,, 554 | ,, 101 |
| ,, 81 | New | ,, 103 |
| ,, 82 | Cf. Section 557 | ,, 104 |
| ,, 83 (1) | Section 560 | ,, 105 (1) |
| ,, 83 (2) | New | ,, 105 (2) |
| ,, 84 | Section 558 | ,, 106 |
| ,, 85 (1) | New | ,, 107 (1) |
| ,, 85 (2) | Section 551 | ,, 107 (2) |
| ,, 86 | ,, 556, 559 | ,, 108 |
| ,, 87 | Cf. Section 563 | ,, 113 |
| ,, 88 | Section 569 | ,, 114 |
| ,, 89 | ,, 568 | ,, 115 |
| ,, 90 | New | ,, 121 |
| ,, 91 | Section 591 | ,, 122 |
| ,, 92 | New | ,, 123 |
| ,, 93 | ,, | ,, 124 |
| ,, 94 | ,, | ,, 126 |
| ,, 95 | ,, | ,, 127 |
| ,, 96 | ,, | ,, 128 |
| ,, 97 | Section 577 | ,, 132 |
| ,, 98 | ,, 578 | ,, 133 |
| ,, 99 | New | ,, 134 |
| ,, 100 | Section 580 | ,, 135 |
| ,, 101 | ,, 585 | ,, 136 |

## TABLE B.—(*Contd.*)

| Section and Order and Rule of the Regulation. | Section of the Code, Regulation II of 1065. | Section and Order and Rule of the British Indian Code, Act V of 1908. |
|---|---|---|
| Section 102 | Cf. Sections 543 & 544 | Section 137 (3) |
| ,, 103 | Section 192 | ,, 139 |
| ,, 104 | ,, 583 | ,, 140 |
| ,, 105 | ,, 584 | ,, 141 |
| ,, 106 | ,, 88 | ,, 142 |
| ,, 107 | ,, 89 | ,, 143 |
| ,, 108 | ,, 552 | ,, 144 |
| ,, 109 | ,, 249 | ,, 145 |
| ,, 110 | New | ,, 146 |
| ,, 111 | ,, | ,, 147 |
| ,, 112 | ,, | ,, 148 |
| ,, 113 | ,, | ,, 149 |
| ,, 114 | ,, | ,, 150 |
| ,, 115 | ,, | ,, 151 |
| ,, 116 | Cf. Section 201, last paragraph | ,, 152 |
| ,, 117 | Cf. Section 49 (c) | ,, 153 |
| ,, 118 | Cf. Section 3, paragraph 3 | ,, 154 |
| ,, { 119<br>,, { 120 | Cf. Section 3, paragraph 1 | ,, { 156<br>,, { 157 |
| ,, 121 | Cf. Section 3, paragraph 2 | ,, 158 |
| ,, 122 | Section 579 | ,, New |
| ,, 123 | ,, 590 | ,, New |
| | THE FIRST SCHEDULE. | |
| Or. 1, r. 1 | Section 22 | Or. 1, r. 1 |
| ,, r. 2 | New | ,, r. 2 |
| ,, r. 3 | Section 24 | ,, r. 3 |
| ,, r. 4 | Sections 22 & 24 | ,, r. 4 |
| ,, r. 5 | New | ,, r. 5 |
| ,, r. 6 | Section 25 | ,, r. 6 |
| ,, r. 7 | New | ,, r. 7 |
| ,, r. 8 (1) | Section 26 | ,, r. 8 (1) |
| ,, r. 8 (2) | ,, 28, paragraph 4 | ,, r. 8 (2) |
| ,, r. 9 | ,, 27 | ,, r. 9 |
| ,, r. 10 (1) | ,, 23 | ,, r. 10 (1) |
| ,, r. 10 (2) & (3) | Section 28, paragraphs 1 to 3 | ,, r. 10 (2) & (3) |
| ,, r. 10 (4) | Section 29 | ,, r. 10 (4) |
| ,, r. 11 | Section 28, last paragraph | ,, r. 11 |
| ,, r. 12 | Section 31 | ,, r. 12 |
| ,, r. 13 | ,, 30 | ,, r. 13 |
| Or. 2, r. 1 | ,, 38 | Or. 2, r. 1 |
| ,, r. 2 | ,, 39 | ,, r. 2 |
| ,, r. 3 | ,, 41, paragraphs 1 & 3 | ,, r. 3 |
| ,, r. 4 | ,, 40 | ,, r. 4 |
| ,, r. 5 | New | ,, r. 5 |
| ,, r. 6 | Section 41, paragraph 2 | ,, r. 6 |
| ,, r. 7 | New | ,, r. 7 |
| Or. 3, r. 1 | Section 32 | Or. 5, r. 1 |
| ,, r. 2 | ,, 33 | ,, r. 2 |
| ,, r. 3 | ,, 34 | ,, r. 3 |
| ,, r. 4 | ,, 35 | ,, r. 4 |
| ,, r. 5 | ,, 36 | ,, r. 5 |
| ,, r. 6 | ,, 37 | ,, r. 6 |

## TABLE B.—(*Contd.*)

| Section and Order and Rule of the Regulation. | Section of the Code, Regulation II of 1065. | Section and Order and Rule of the British Indian Code, Act V of 1908. |
|---|---|---|
| Or. 4, r. 1 (1) | Section 44 | Or. 4, r. 1 (1) |
| „ r. 1 (2) | New | „ r. 1 (2) |
| „ r. 2 | Section 54 last paragraph | „ r. 2 |
| Or. 5, r. 1 | Section 60 | Or. 5, r. 1 |
| „ r. 2 | „ 61 | „ r. 2 |
| „ r. 3 | „ 62 | „ r. 3 |
| „ r. 4 | „ 63 | „ r. 4 |
| „ r. 5 | „ 64 | „ r. 5 |
| „ r. 6 | „ 65 | „ r. 6 |
| „ r. 7 | „ 66 | „ r. 7 |
| „ r. 8 | „ 67 | „ r. 8 |
| „ r. 9 | „ 68 | „ r. 9 |
| „ r. 10 | „ 69 | „ r. 10 |
| „ r. 11 | „ 70 | „ r. 11 |
| „ r. 12 | „ 71 | „ r. 12 |
| „ r. 13 | „ 72 | „ r. 13 |
| „ r. 14 | „ 73 | „ r. 14 |
| „ r. 15 | „ 74 | „ r. 15 |
| „ r. 16 | „ 75 | „ r. 16 |
| „ r. 17 | „ 76 | „ r. 17 |
| „ r. 18 | „ 77 | „ r. 18 |
| „ r. 19 | Section 78, paragraph 1 | „ r. 19 |
| „ r. 20 (1) | „ „ 2 | „ r. 20 (1) |
| „ r. 20 (2) | Section 79 | „ r. 20 (2) |
| „ r. 20 (3) | „ 80 | „ r. 20 (3) |
| „ r. 21 | „ 81 | „ r. 21 |
| „ r. 22 | Section 81, paragraph 2 | „ r. 23 |
| „ r. 23 | „ 82, 83 | „ r. 24 |
| „ r. 24 | „ 84 | „ r. 25 |
| „ r. 25 | „ 407 | „ r. 27 |
| „ r. 26 } | „ 447 | „ { r. 28 } |
| „ r. 27 } | | „ { r. 29 } |
| „ r. 28 | „ { 85<br>„ { 86 | „ r. 30 |
| Or. 6, r. 1 | New | Or. 6, r. 1 |
| „ r. 2 | „ | „ r. 2 |
| „ r. 3 | „ | „ r. 3 |
| „ r. 4 | „ | „ r. 4 |
| „ r. 5 | „ | „ r. 5 |
| „ r. 6 | „ | „ r. 6 |
| „ r. 7 | „ | „ r. 7 |
| „ r. 8 | „ | „ r. 8 |
| „ r. 9 | „ | „ r. 9 |
| „ r. 10 | „ | „ r. 10 |
| „ r. 11 | „ | „ r. 11 |
| „ r. 12 | „ | „ r. 12 |
| „ r. 13 | „ | „ r. 13 |
| „ r. 14 } | Cf. Sections 47, 48 & 110 & 111 | { „ r. 14 |
| „ r. 15 } | | { „ r. 15 |
| „ r. 16 | New | „ r. 16 |
| „ r. 17 | Cf. Sections 49 & 111 | „ r. 17 |
| „ r. 18 | „ 50 (d) | „ r. 18 |

## TABLE B.—(*Contd.*)

| Section and Order and Rule of the Regulation. | Section of the Code, Regulation II of 1065. | Section and Order and Rule of the British Indian Code, Act V of 1908. |
|---|---|---|
| Or. 7, r. 1 } | Section 46, paragraph 1 to 3 | { Or. 7, r. 1 |
| ,, r. 2 } | | { ,, r. 2 |
| ,, r. 3 | New | ,, r. 3 |
| ,, r. 4 | Section 46, paragraph 4 | ,, r. 4 |
| ,, r. 5 | ,, ,, 5 | ,, r. 5 |
| ,, r. 6 | ,, last paragraph | ,, r. 6 |
| ,, r. 7 | New | ,, r. 7 |
| ,, r. 8 | ,, | ,, r. 8 |
| ,, r. 9 | Section 54 | ,, r. 9 |
| ,, r. 10 | ,, 53 | ,, r. 10 |
| ,, r. 11 | ,, 50 | ,, r. 11 |
| ,, r. 12 | ,, 51 | ,, r. 12 |
| ,, r. 13 | ,, 52 | ,, r. 13 |
| ,, r. 14 | ,, 55 | ,, r. 14 |
| ,, r. 15 | ,, 56 | ,, r. 15 |
| ,, r. 16 | ,, 57 | ,, r. 16 |
| ,, r. 17 | ,, 58 | ,, r. 17 |
| ,, r. 18 | ,, 59 | ,, r. 18 |
| Or. 8, r. 1 | ,, 105 | Or. 8, r. 1 |
| ,, r. 2 | New | ,, r. 2 |
| ,, r. 3 | ,, | ,, r. 3 |
| ,, r. 4 | ,, | ,, r. 4 |
| ,, r. 5 | ,, | ,, r. 5 |
| ,, r. 6 | Section 106 | ,, r. 6 |
| ,, r. 6 (3) | New | ,, r. 6 (3) |
| ,, r. 7 | ,, | ,, r. 7 |
| ,, r. 8 | ,, | ,, r. 8 |
| ,, r. 9 | Section 107 | ,, r. 9 |
| ,, r. 10 | ,, 108 | ,, r. 10 |
| Or. 9, r. 1 | ,, 90 | Or. 9, r. 1 |
| ,, r. 2 | ,, 91 | ,, r. 2 |
| ,, r. 3 | ,, 92 | ,, r. 3 |
| ,, r. 4 | ,, 93 | ,, r. 4 |
| ,, r. 5 | ,, 94 | ,, r. 5 |
| ,, r. 6 | ,, 95 | ,, r. 6 |
| ,, r. 7 | ,, 96 | ,, r. 7 |
| ,, r. 8 | ,, 97 | ,, r. 8 |
| ,, r. 9 | ,, 98 | ,, r. 9 |
| ,, r. 10 | ,, 100 | ,, r. 10 |
| ,, r. 11 | ,, 101 | ,, r. 11 |
| ,, r. 12 | ,, 102 | ,, r. 12 |
| ,, r. 13 | ,, 103 | ,, r. 13 |
| ,, r. 14 | ,, 104 | ,, r. 14 |
| Or. 10, r. 1 | ,, 112 | Or. 10, r. 1 |
| ,, r. 2 | ,, 113 | ,, r. 2 |
| ,, r. 3 | ,, 114 | ,, r. 3 |
| ,, r. 4 | ,, 115 | ,, r. 4 |
| Or. 11, r. 1 | ,, 116 | Or. 11, r. 1 |
| ,, r. 2 | New | ,, r. 2 |
| ,, r. 3 | Section 118 | ,, r. 3 |
| ,, r. 4 | New | ,, r. 4 |
| ,, r. 5 | Section 119 | ,, r. 5 |

TABLE B.—(*Contd.*)

| Section and Order and Rule of the Regulation. | Section of the Code, Regulation II of 1065. | Section and Order and Rule of the British Indian Code, Act V of 1908. |
|---|---|---|
| Or. 11, r. 6 | Section 120 | Or. 11, r. 6 |
| ,, r. 7 | New | ,, r. 7 |
| ,, r. 8 | Section 121 | ,, r. 8 |
| ,, r. 9 | New | ,, r. 9 |
| ,, r. 10 | ,, | ,, r. 10 |
| ,, r. 11 | Section 122 | ,, r. 11 |
| ,, r. 12 } | ,, 124 | { ,, r. 12 |
| ,, r. 13 } | | { ,, r. 13 |
| ,, r. 14 | ,, 125 | ,, r. 14 |
| ,, r. 15 | ,, 126 | ,, r. 15 |
| ,, r. 16 | New | ,, r. 16 |
| ,, r. 17 | Section 127 | ,, r. 17 |
| ,, r. 18 (1) | ,, 128 | ,, r. 18 (1) |
| ,, r. 18 (2) | ,, 129 | ,, r. 18 (2) |
| ,, r. 19 | New | ,, r. 19 |
| ,, r. 20 | Section 130 | ,, r. 20 |
| ,, r. 21 | ,, 131 | ,, r. 21 |
| ,, r. 22 | New | ,, r. 22 |
| ,, r. 23 | ,, | ,, r. 23 |
| Or. 12, r. 1 | ,, | Or. 12, r. 1 |
| ,, r. 2 | Section 123 | ,, r. 2 |
| ,, r. 3 | New | ,, r. 3 |
| ,, r. 4 | ,, | ,, r. 4 |
| ,, r. 5 | ,, | ,, r. 5 |
| ,, r. 6 | ,, | ,, r. 6 |
| ,, r. 7 | ,, | ,, r. 7 |
| ,, r. 8 | ,, | ,, r. 8 |
| ,, r. 9 | ,, | ,, r. 9 |
| Or. 13, r. 1 (1) | Section 133 | Or. 13, r. 1 (1) |
| ,, r. 1 (2) | ,, 135, paragraph 1 | ,, r. 1 (2) |
| ,, r. 2 | ,, 134 | ,, r. 2 |
| ,, r. 3 | ,, 135, paragraph 2 | ,, r. 3 |
| ,, r. 4 } | | { ,, r. 4 |
| ,, r. 5 } | ,, 136 | { ,, r. 5 |
| ,, r. 6 } | ,, 137 | { ,, r. 6 |
| ,, r. 7 } | | { ,, r. 7 |
| ,, r. 8 | ,, 138 | ,, r. 8 |
| ,, r. 9 | ,, 139 | ,, r. 9 |
| ,, r. 10 | ,, 132 | ,, r. 10 |
| ,, r. 11 | ,, 140 | ,, r. 11 |
| Or. 14, r. 1 (1) to (5) | ,, 141 | Or. 14, r. 1 (1) to (5) |
| ,, r. 1 (6) | ,, 141, last paragraph | ,, r. 1 (6) |
| ,, r. 2 | ,, 141, penultimate paragraph | ,, r. 2 |
| ,, r. 3 | ,, 142 | ,, r. 3 |
| ,, r. 4 | ,, 143 | ,, r. 4 |
| ,, r. 5 | ,, 144 | ,, r. 5 |
| ,, r. 6 | ,, 145 | ,, r. 6 |
| ,, r. 7 | ,, 146 | ,, r. 7 |
| Or. 15, r. 1 | ,, 147 | Or. 15, r. 1 |
| ,, r. 2 | ,, 148 | ,, r. 2 |
| ,, r. 3 | ,, 149 | ,, r. 3 |
| ,, r. 4 | ,, 150 | ,, r. 4 |
| Or. 16, r. 1 | ,, 154 | Or. 16, r. 1 |

## TABLE B—(*Contd.*)

| Section and order and Rule of the Regulation. | Section of the Code, Regulation II of 1065. | Section and Order and Rule of the British Indian Code, Act V of 1908. |
|---|---|---|
| Or. 16, r. 2 (1) & (3) | Section 155 | Or. 16, r. 2 (1) & (3) |
| „ r. 2 (2) | New | „ r. 2 (2) |
| „ r. 3 | Section 156 | „ r. 3 |
| „ r. 4 | „ 157 | „ r. 4 |
| „ r. 5 | „ 158 | „ r. 5 |
| „ r. 6 | „ 159 | „ r. 6 |
| „ r. 7 | „ 160 | „ r. 7 |
| „ r. 8 | „ 161 | „ r. 8 |
| „ r. 9 | „ 162 | „ r. 9 |
| „ r. 10 | „ 163 | „ r. 10 |
| „ r. 11 | „ 164 | „ r. 11 |
| „ r. 12 | „ 165 | „ r. 12 |
| „ r. 13 | New | „ r. 13 |
| „ r. 14 | Section 166 | „ r. 14 |
| „ r. 15 | „ 167 | „ r. 15 |
| „ r. 16 (1) | Cf. Section 168 | „ r. 16 (1) |
| „ r. 16 (2) | New Cf. Section 170 | „ r. 16 (2) |
| „ r. 17 | Section 169. | „ r. 17 |
| „ r. 18 | „ 169, last paragraph | „ r. 18 |
| „ r. 19 | Section 171 | „ r. 19 |
| „ r. 20 | „ 172 | „ r. 20 |
| „ r. 21 | „ 173 | „ r. 21 |
| Or. 17, r. 1 | „ 151 | Or. 17, r. 1 |
| „ r. 2 | „ 152 | „ r. 2 |
| „ r. 3 | „ 153 | „ r. 3 |
| Or. 18, r. 1 | „ 174. Explanation | Or. 18, r. 1 |
| „ r. 2 (1) | „ 174 | „ r. 2 (1) |
| „ r. 2 (2) & (3) | „ 175, paras (1) & (2) | „ r. 2 (2) & (3) |
| „ r. 3 | „ 175, last para | „ r. 3 |
| „ r. 4 | „ 176 | „ r. 4 |
| „ r. 5 | „ 177 | „ r. 5 |
| „ r. 6 | „ 178 | „ r. 6 |
| „ r. 7 | „ 179 | „ r. 8 |
| „ r. 8 | „ 180 | „ r. 9 |
| „ r. 9 | „ 181 | „ r. 10 |
| „ r. 10 | „ 182 | „ r. 11 |
| „ r. 11 | „ 183 | „ r. 12 |
| „ r. 12 | „ 184 | „ r. 13 |
| „ r. 13 | „ 185 | „ r. 14 |
| „ r. 14 | „ 186 | „ r. 15 |
| „ r. 15 | „ 187 | „ r. 16 |
| „ r. 16 | „ 188 | „ r. 17 |
| „ r. 17 | New | „ r. 18 |
| Or. 19, r. 1 | „ | Or. 19, r. 1 |
| „ r. 2 | Section 190 | „ r. 2 |
| „ r. 3 | „ 191 | „ r. 3 |
| Or. 20, r. 1 | „ 193 | Or. 20, rr. 1 & 2 |
| „ r. 2 | „ 194 | „ r. 2 |
| „ r. 3 | „ 197 | „ r. 3 |
| „ r. 4 | „ 198 | „ r. 4 |
| „ r. 5 | „ 199 | „ r. 5 |
| „ r. 6 (1) & (2) | „ 201 | „ r. 6 (1) & (2) |
| „ r. 6 (3) | „ 216 | „ r. 6 (3) |
| „ r. 7 | „ 200 | „ r. 7 |

## TABLE B —(*Contd.*)

| Section and Order and Rule of the Regulation. | Section of the Code, Regulation II of 1065. | Section and Order and Rule of the British Indian Code, Act V of 1908. |
|---|---|---|
| Or. 20, r. 8 | New | Or. 20, r. 8 |
| ,, r. 9 | Section 202 | ,, r. 9 |
| ,, r. 10 | ,, 203 | ,, r. 10 |
| ,, r. 11 | ,, 205 | ,, r. 11 |
| ,, r. 12 (1) (a) | New | ,, r. 12 (1) (a) |
| ,, r. 12 (1) (b) | Section 207 | ,, r. 12 (1) (b) |
| ,, r. 12 (1) (c) | ,, 206 | ,, r. 12 (1) (c) |
| ,, r. 12 (2) | New | ,, r. 12 (2) |
| ,, r. 13 | New | ,, r. 13 |
| ,, r. 14 (1) | Section 208 | ,, r. 14 (1) |
| ,, r. 14 (2) | New | ,, r. 14 (2) |
| ,, r. 15 | ,, 209 | ,, r. 15 |
| ,, r. 16 | ,, 210 | ,, r. 16 |
| ,, r. 17 | New | ,, r. 17 |
| ,, r. 18 | ,, | ,, r. 18 |
| ,, r. 19 | Section 211 | ,, r. 19 |
| ,, r. 20 | ,, 212 | ,, r. 20 |
| Or. 21, r. 1 (1) | ,, 253 | Or. 21, r. 1 (1) |
| ,, r. 1 (2) | New | ,, r. 1 (2) |
| ,, r. 2 | Section 255 | ,, r. 2 |
| ,, r. 3 | New | ,, r. 3 |
| ,, r. 4 | Section 218, last para | ,, r. 5 |
| ,, r. 5 | ,, 219 | ,, r. 6 |
| ,, r. 6 | ,, 220 | ,, r. 7 |
| ,, r. 7 | ,, 221 | ,, r. 8 |
| ,, r. 8 | ,, 223, paragraph 1 | ,, r. 10 |
| ,, r. 9 (1) | Section 252 | ,, r. 11 (1) |
| ,, r. 9 (2) | ,, 228 | ,, r. 11 (2) |
| ,, r. 9 (3) | New | ,, r. 11 (3) |
| ,, r. 10 | Section 229 | ,, r. 12 |
| ,, r. 11 | ,, 230 | ,, r. 13 |
| ,, r. 12 | ,, 231 | ,, r. 14 |
| ,, r. 13 | ,, 224 | ,, r. 15 |
| ,, r 14 | ,, 225 | ,, r. 16 |
| ,, r. 15 | ,, 239 | ,, r. 17 |
| ,, r. 16 (1) to (3) | ,, 242 | ,, r. 18 (1) to (3) |
| ,, r. 16 (4) | New | ,, r. 18 (4) |
| ,, r. 17 | Section 243 | ,, r. 19 |
| ,, r. 18 | New | ,, r. 20 |
| ,, r. 19 | Section 223, paragraph 2 | ,, r. 21 |
| ,, r. 20 (1) | Section 244 | ,, r. 22 (1) |
| ,, r. 20 (2) | New | ,, r. 22 (2) |
| ,, r. 21 | Section 245 | ,, r. 23 |
| ,, r. 22 | Section 246 ; 247 | ,, r. 24 |
| ,, r. 23 (1) | Section 247, paragraph 2 | ,, r. 25 (1) |
| ,, r. 23 (2) | New | ,, r. 25 (2) |
| ,, r. 24 (1), (2) | Section 233 | ,, r. 26 (1), (2) |
| ,, r. 24 (3) | ,, 234 | ,, r. 26 (3) |
| ,, r. 25 | ,, 235 | ,, r. 27 |
| ,, r. 26 | ,, 236 | ,, r. 28 |
| ,, r. 27 | ,, 237 | ,, r. 29 |
| ,, r. 28 | ,, 250 | ,, r. 30 |
| ,, r. 29 | ,, 256 | ,, r. 31 |
| ,, r. 30 (1),(3) & (4) | ,, 257 | ,, r. 32 (1), (3) & (4) |

## TABLE B—(*Contd.*)

| Section and Order and Rule of the Regulation. | Section of the Code, Regulation II of 1065. | Section and Order and Rule of the British Indian Code, Act V of 1908. |
|---|---|---|
| Or. 21, r. 30 (2) & (5) | New | Or. 21, r. 32 (2) & (5) |
| ,, r. 31 | ,, | ,, r. 33 |
| ,, r. 32 (1) to (4) | Section 258 | ,, r. 34 (1) to (4) |
| ,, r. 32 (5) | ,, 259 | ,, r. 34 (5) |
| ,, r. 32 (6) | New | ,, r. 34 (6) |
| ,, r. 33 (1) | Section 260 | ,, r. 35 (1) |
| ,, r. 33 (2) & (3) | New | ,, r. 35 (2) & (3) |
| ,, r. 34 | Section 261 | ,, r. 36 |
| ,, r. 35 | ,, 241 | ,, r. 37 |
| ,, r. 36 | ,, 326 | ,, r. 38 |
| ,, r. 37 | Section 329 & 330 | ,, r. 39 |
| ,, r. 38 | Section 327 | ,, r. 40 |
| ,, r. 39 | ,, 264 | ,, r. 41 |
| ,, r. 40 | ,, 251 | ,, r. 42 |
| ,, r. 41 | ,, 266 | ,, r. 43 |
| ,, r. 42 | New | ,, r. 44 |
| ,, r. 43 | ,, | ,, r. 45 |
| ,, r. 44 | Section 265 | ,, r. 46 |
| ,, r. 45 | New | ,, r. 47 |
| ,, r. 46 | ,, | ,, r. 48 |
| ,, r. 47 | ,, | ,, r. 49 |
| ,, r. 48 | ,, | ,, r. 50 |
| ,, r. 49 | Section 267 | ,, r. 51 |
| ,, r. 50 | ,, 269 | ,, r. 52 |
| ,, r 51 (1), (2), (4) & (5) | ,, 270 | ,, r. 53 (1), (2), (4) & (5) |
| ,, r. 51 (3) & (6) | New | ,, r. 53 (3) & (6) |
| ,, r. 52 | Section 271 | ,, r. 54 |
| ,, r. 53 | ,, 272 | ,, r. 55 |
| ,, r. 54 | ,, 274 | ,, r. 56 |
| ,, r. 55 | New | ,, r. 57 |
| ,, r. 56 | Section 275 | ,, r. 58 |
| ,, r. 57 | ,, 276 | ,, r. 59 |
| ,, r. 58 | ,, 277 | ,, r. 60 |
| ,, r. 59 | ,, 278 | ,, r. 61 |
| ,, r. 60 | ,, 279 | ,, r. 62 |
| ,, r. 61 | ,, 280 | ,, r. 63 |
| ,, r. 62 | ,, 281 | ,, r. 64 |
| ,, r. 63 | ,, 283 | ,, r. 65 |
| ,, r. 64 | ,, 284 | ,, r. 66 |
| ,, r. 65 (1) & (2) | ,, 286 | ,, r. 67 (1) & (2) |
| ,, r. 65 (3) | New | ,, r. 67 (3) |
| ,, r. 66 | Section 287 | ,, r. 68 |
| ,, r. 67 | ,, 288 | ,, r 69 |
| ,, r. 68 | ,, 290 | ,, r. 71 |
| ,, r. 69 | ,, 291 | ,, r. 72 |
| ,, r. 70 | ,, 289 | ,, r. 73 |
| ,, r. 71 | New | ,, r. 74 |
| ,, r. 72 | ,, | ,, r. 75 |
| ,, r. 73 | Section 293 | ,, r. 76 |
| ,, r. 74 (1) & (2) | ,, 294 | ,, r. 77 (1) & (2) |
| ,, r. 74 (3) | New | ,, r. 77 (3) |
| ,, r. 75 | ,, 295 | ,, r. 78 |

## TABLE B.—(*Contd.*)

| Section and Order and Rule of the Regulation. | Section of the Code, Regulation II of 1065. | Section and Order and Rule of the British Indian Code, Act V of 1908. |
|---|---|---|
| Or. 21, r. 76 (1) | Section 296 | Or. 21, r. 79 (1) |
| ,, r. 76 (2) | ,, 297 | ,, r. 79 (2) |
| ,, r. 76 (3) | ,, 298 | ,, r. 79 (3) |
| ,, r. 77 | ,, 299 | ,, r. 80 |
| ,, r. 78 | ,, 300 | ,, r. 81 |
| ,, r. 79 | ,, 301 | ,, r. 82 |
| ,, r. 80 (1) & (2) | ,, 302 | ,, r. 83 (1) & (2) |
| ,, r. 80 (3) | New | ,, r. 83 (3) |
| ,, r. 81 (1) | Section 303 | ,, r. 84 (1) |
| ,, r. 81 (2) | New | ,, r. 84 (2) |
| ,, r. 82 | Section 304 | ,, r. 85 |
| ,, r. 82 Proviso | New | ,, r. 85 Proviso. |
| ,, r. 83 | Section 305 | ,, r. 86 |
| ,, r. 84 | ,, 306 | ,, r. 87 |
| ,, r. 85 | ,, 307 | ,, r. 88 |
| ,, r. 86 | ,, 307-A | ,, r. 89 |
| ,, r. 87 | ,, 308 | ,, r. 90 |
| ,, r. 88 | ,, 310 | ,, r. 91 |
| ,, r. 89 | ,, 309 Cf. 311 | ,, r. 92 |
| ,, r. 90 | ,, 312 | ,, r. 93 |
| ,, r. 91 | ,, 313 | ,, r. 94 |
| ,, r. 92 | ,, 315 | ,, r. 95 |
| ,, r. 93 | ,, 316 | ,, r. 96 |
| ,, r. 94 | ,, 317 | ,, r. 97 |
| ,, r. 95 | ,, 318, 319 | ,, r. 98 |
| ,, r. 96 | ,, 320 | ,, r. 99 |
| ,, r. 97 } | ,, 321 and 324 | ,, r. 100 |
| ,, r. 98 } | | ,, r. 101 |
| ,, r. 99 | ,, 322 | ,, r. 102 |
| ,, r. 100 | Section 321, last para. | Or. 21, r. 103 |
| Or. 22, r. 1 | ,, 346 | Or. 22, r. 1 |
| ,, r. 2 | ,, 347 | ,, r. 2 |
| ,, r. 3 (1) | ,, 348 and 349 | ,, r. 3 (1) |
| ,, r. 3 (2) | ,, 350 | ,, r. 3 (2) |
| ,, r. 4 | ,, 352 | ,, r. 4 |
| ,, r. 5 | ,, 351 | ,, r. 5 |
| ,, r. 6 | New | ,, r. 6 |
| ,, r. 7 | Section 353 | ,, r. 7 |
| ,, r. 8 | ,, 354 | ,, r. 8 |
| ,, r. 9 (1) & (2) | ,, 355 | ,, r. 9 (1) & (2) |
| ,, r. 9 (3) | New | ,, r. 9 (3) |
| ,, r. 10 (1) | Section 356 | ,, r. 10 (1) |
| ,, r. 10 (2) | New | ,, r. 10 (2) |
| ,, r. 11 | Cf. Section 551 | ,, r. 11 |
| ,, r. 12 | New | ,, r. 12 |
| Or. 23, r. 1 | Section 357 | Or. 23, r. 1 |
| ,, r. 2 | ,, 358 | ,, r. 2 |
| ,, r. 3 | ,, 359 | ,, r. 3 |
| ,, r. 4 | ,, 360 | New |
| ,, r. 5 | New | ,, r. 4 |
| Or. 24, r. 1 | Section 361 | Or. 24, r. 1 |
| ,, r. 2 | ,, 362 | ,, r. 2 |
| ,, r. 3 | ,, 363 | ,, r. 3 |
| ,, r. 4 | ,, 364 | ,, r. 4 |

TABLE B.—(*Contd.*)

| Section and Order and Rule of the Regulation. | Section of the Code. Regulation II of 1865 | Section or Order and Rule of the British Indian Act V of 1908. |
|---|---|---|
| Or. 25, r. 1 (1) | Section 365 | Or. 25, r. 1 |
| ,, r. 1 (2) | ,, 367 | ,, r. 1 (2) |
| ,, r. 2 | ,, 366 | ,, r. 2 |
| Or. 26, r. 1 | ,, 368 | Or. 26, r. 1 |
| ,, r. 2 | ,, 369 | ,, r. 2 |
| ,, r. 3 | ,, 370 | ,, r. 3 |
| ,, r. 4 | ,, 371 | ,, r. 4 |
| ,, r. 5 | ,, 372 | ,, r. 5 |
| ,, r. 6 | ,, 373 | ,, r. 6 |
| ,, r. 7 | ,, 374 | ,, r. 7 |
| ,, r. 8 | ,, 375 | ,, r. 8 |
| ,, r. 9 | ,, 377 | ,, r. 9 |
| Proviso | New | Proviso |
| ,, r. 10 (1) & (2) | Section 378 | ,, r. 10 (1) & (2) |
| ,, r. 10 (3) | New | ,, r. 10 (3) |
| ,, r. 11 | Section 379 | ,, r. 11 |
| ,, r. 12 | ,, 380 | ,, r. 12 |
| ,, r. 13 } | ,, 381 | { ,, r. 13 |
| ,, r. 14 } | | { ,, r. 14 |
| ,, r. 14 (4) | ,, 381 last para. | New |
| ,, r. 15 | ,, 382 | Or. 26, r. 15 |
| ,, r. 16 | ,, 383 | ,, r. 16 |
| ,, r. 17 (1) | ,, 384 | ,, r. 17 (1) |
| ,, r. 17 (2) | New | ,, r. 17 (2) |
| ,, r. 17 (3) | Section 384 | Proviso |
| ,, r. 18 | Section 385 | ,, r. 18 |
| Or. 27, r. 1 | New | Or. 27, r. 1 |
| ,, r. 2 | Section 402 | ,, r. 2 |
| ,, r. 3 | ,, 403 | ,, r. 3 |
| ,, r. 4 | ,, 404 | ,, r. 4 |
| ,, r. 5 | ,, 405 | ,, r. 5 |
| ,, r. 6 | ,, 406 | ,, r. 6 |
| ,, r. 7 | ,, 408 | ,, r. 7 |
| ,, r. 8 (1) | ,, 411 | ,, r. 8 (1) |
| ,, r. 8 (2) | ,, 412 | ,, r. 8 (2) |
| Or. 28, r. 1 | ,, 444 | Or. 28, r. 1 |
| Explanation | New | Explanation |
| ,, r. 2 | Section 445 | ,, r. 2 |
| ,, r. 3 | ,, 446 | ,, r. 3 |
| ,, r. 4 | ,, 448 | New |
| Or. 29, r. 1 | ,, 415 | Or. 29, r. 1 |
| ,, r. 2 } | ,, 416 | { ,, r. 2 |
| ,, r. 3 } | | { ,, r. 3 |
| Or. 30, r. 1 } | | { Or. 30, r. 1 |
| ,, r. 2 | | ,, r. 2 |
| ,, r. 3 | | ,, r. 3 |
| ,, r. 4 | | ,, r. 4 |
| ,, r. 5 | New | ,, r. 5 |
| ,, r. 6 | | ,, r. 6 |
| ,, r. 7 | | ,, r. 7 |
| ,, r. 8 | | ,, r. 8 |
| ,, r. 9 | | ,, r. 9 |
| ,, r. 10 } | | { ,, r. 10 |
| Or. 31, r. 1 | Section 417 | Or. 31, r. 1 |
| ,, r. 2 | ,, 418 | ,, r. 2 |
| ,, r. 3 | ,, 419 | ,, r. 3 |

## TABLE B.—(*Contd.*)

| Section and Order and Rule of the Regulation. | Section of the Code, Regulation II of 1065. | Section and Order and Rule of the British Indian Code, Act V of 1908. |
|---|---|---|
| Or. 32, r. 1 | Section 420 | Or. 32, r. 1 |
| „ r. 2 | „ 422 | „ r. 2 |
| „ r. 3 (1) | „ 423 | „ r. 3 (1) |
| „ r. 3 (2) & (3) | „ 436 | „ r. 3 (2) & (3) |
| „ r. 3 (4) | New | „ r. 3 (4) |
| „ r. 3 (5) | Section 449 | Or. 32 |
| „ r. 4 (1) | Section 425 Cf. Section 437 | „ r. 4 (1) |
| „ r. 4 (2) & (3) | New | „ r. 4 (2) & (3) |
| „ r. 4 (4) | Section 436, Paragraph 2 | „ r. 4 (4) |
| „ r. 4 (5) | New | |
| „ r. 5 (1) | Section 421 | „ r. 5 (1) |
| „ r. 5 (2) | „ 424 | „ r. 5 (2) |
| „ r. 6 | „ 441 | „ r. 6 |
| „ r. 7 | „ 442 | „ r. 7 |
| „ r. 8 | „ 427 | „ r. 8 |
| „ r. 9 (1) | „ 426 | „ r. 9 (1) |
| „ r. 9 (2) | New | „ r. 9 (2) |
| „ r. 10 (1) | Section 428 | „ r. 10 (1) |
| „ r. 10 (2) | „ 429 | „ r. 10 (2) |
| „ r. 11 (1) | „ 438 | „ r. 11 (1) |
| „ r. 11 (2) | „ 439 | „ r. 11 (2) |
| „ r. 12 (1) | „ 430 | „ r. 12 (1) |
| „ r. 12 (2) & (3) | „ 431 | „ r. 12 (2) & (3) |
| „ r. 12 (4) | „ 432 | „ r. 12 (4) |
| „ r. 12 (5) | „ 433 | „ r. 12 (5) |
| „ r. 13 | „ 434 | „ r. 13 |
| „ r. 14 | „ 435 | „ r. 14 |
| „ r. 15 | „ 443 | „ r. 15 |
| Or. 33, r. 1 | „ 386 | Or. 33, r. 1 |
| „ r. 2 | „ 388 | „ r. 2 |
| „ r. 3 | „ 389 | „ r. 3 |
| „ r. 4 | „ 391 | „ r. 4 |
| „ r. 5 (a) | „ 390 | „ r. 5 (a) |
| „ r. 5 (b) to (e) | „ 392 | „ r. 5 (b) to (e) |
| „ r. 6 | „ 393 | „ r. 6 |
| „ r. 7 | „ 394 | „ r. 7 |
| „ r. 8 | „ 395 | „ r. 8 |
| „ r. 9 | „ 399 | „ r. 9 |
| „ r. 10 | „ 396 | „ r. 10 |
| „ r. 11 | „ 397 | „ r. 11 |
| „ r. 12 | New | „ r. 12 |
| „ r. 13 | „ | „ r. 13 |
| „ r. 14 | „ | „ r. 14 |
| „ r. 15 | Section 398 | „ r. 15 |
| „ r. 16 | „ 400 | „ r. 16 |
| Or. 34, r. 1 | „ 450 | Or. 35, r. 1 |
| „ r. 2 | „ 451 | „ r. 2 |
| „ r. 3 | „ 455 | „ r. 3 |
| „ r. 4 | „ 452 | „ r. 4 |
| „ r. 5 | „ 453 | „ r. 5 |
| „ r. 6 | „ 454 | „ r. 6 |
| Or. 35, r. 1 | „ 506 | Or. 36, r. 1 |
| „ r. 2 | „ 507 | „ r. 2 |
| „ r. 3 | „ 508 | „ r. 3 |

## TABLE B.—(*Contd.*)

| Section and Order and Rule of the Regulation. | Section of the Code, Regulation II of 1065. | Section and Order and Rule of the British Indian Code, Act V of 1908. |
|---|---|---|
| Or. 35, r. 4 | Section 509 | Or. 36, r. 4 |
| ,, r. 5 | ,, 510 | ,, r. 5 |
| Or. 36, r. 1 | ,, 456, 457 | Or. 38, r. 1 |
| Proviso | New | Proviso |
| ,, r. 2 | Section 458 | ,, r. 2 |
| ,, r. 3 | ,, 459 | ,, r. 3 |
| ,, r. 4 (1) | ,, 460 | ,, r. 4 |
| ,, r. 4 (2) | ,, 461 | New |
| ,, r. 5 | Sections 462, 463 | Or. 38, r. 5 |
| ,, r. 6 | Section 464 | ,, r. 6 |
| ,, r. 7 | ,, 465 | ,, r. 7 |
| ,, r. 8 | ,, 466 | ,, r. 8 |
| ,, r. 9 | ,, 467 | ,, r. 9 |
| ,, r. 10 | ,, 468 | ,, r. 10 |
| ,, r. 11 | ,, 469 | ,, r. 11 |
| ,, r. 12 | New | ,, r. 12 |
| Or. 37, r. 1 | Section 471 | Or. 39, r. 1 |
| ,, r. 2 | ,, 472 | ,, r. 2 |
| ,, r. 3 | ,, 473 | ,, r. 3 |
| ,, r. 4 | ,, 475 | ,, r. 4 |
| ,, r. 5 | ,, 474 | ,, r. 5 |
| ,, r. 6 | ,, 477 | ,, r. 6 |
| ,, r. 7 | ,, 478 | ,, r. 7 |
| ,, r. 8 | ,, 479 | ,, r. 8 |
| ,, r. 9 | ,, 480 | ,, r. 9 |
| ,, r. 10 | ,, 481 | ,, r. 10 |
| Or. 38, r. 1 } | | { Or. 40, r. 1 |
| ,, r. 2 } | ,, 482 | { ,, r. 2 |
| ,, r. 3 } | | { ,, r. 3 |
| ,, r. 4 | New | ,, r. 4 |
| ,, r. 5 | Section 483 | ,, r. 5 |
| Or. 39, r. 1 | ,, 485 | Schedule 2, para 1 |
| ,, r. 2 | ,, 486, para 1 | ,, 2 |
| ,, r. 3 | ,, 487 | ,, 3 |
| ,, r. 4 | ,, 488 | ,, 4 |
| ,, r. 5 (1) (a) | ,, 486, para 2 | ,, 5 (1) (a) |
| ,, r. 5 (1) (b) & (c) & 5 (2) | } Sections 489, 490 | ,, { 5 (1) (b) & (c) & 5 (2) |
| ,, r. 6 | ,, 491 | ,, 6 |
| ,, r. 7 | ,, 492 | ,, 7 |
| ,, r. 8 | ,, 493 | ,, 8 |
| ,, r. 9 | ,, 494 | ,, 9 |
| ,, r. 10 | ,, 495 | ,, 10 |
| ,, r. 11 | ,, 496 | ,, 11 |
| ,, r. 12 (a) & (b) | ,, 497 | ,, 12 (a) & (b) |
| ,, r. 12 (c) | New | ,, 12 (c) |
| ,, r. 13 | Section 498 | ,, 13 |
| ,, r. 14 | ,, 499 | ,, 14 |
| ,, r. 15 (1) | ,, 500 | ,, 15 (1) |
| ,, r. 15 (2) | New | Schedule 2, para 1 |
| ,, r. 16 | Section 501 | ,, 16 |
| ,, r. 17 | ,, 502 | ,, 17 |
| ,, r. 18 | New | ,, 18 |

## TABLE B.—(*Contd.*)

| Section and Order and Rule of the Regulation. | Section of the Code, Regulation II of 1065. | Section and Order and Rule of the British Indian Code, Act V of 1908. |
|---|---|---|
| Or. 39, r. 19 | Section 503 | Schedule 2, para 19 |
| ,, r. 20 | ,, 504 | ,, 20 |
| ,, r. 21 (1) | ,, 505 | ,, 21 (1) |
| ,, r. 21 (2) | New | ,, 21 (2) |
| ,, r. 22 | ,, | ,, 23 |
| Or. 40, r 1 | Section 513 | Or. 41, r. 1 |
| ,, r. 2 | ,, 514 | ,, r. 2 |
| ,, r. 3 | ,, 515 | ,, r. 3 |
| ,, r. 4 | ,, 516 | ,, r. 4 |
| ,, r. 5 | ,, 517 | ,, r. 5 |
| ,, r. 6 | ,, 518 | ,, r. 6 |
| ,, r. 7 | ,, 519 | ,, r. 7 |
| ,, r. 8 | New | ,, r. 8 |
| ,, r. 9 | Section 520 | ,, r. 9 |
| ,, r. 10 (1) & (2) | ,, 521 | ,, r. 10 |
| ,, r. 10 (3) & (4) | ,, New | ,, r. 10 |
| ,, r. 11 | ,, 523 | ,, r. 12 |
| ,, r. 12 | ,, 522 | ,, r. 13 |
| ,, r. 13 | ,, 524 | ,, r. 14 |
| ,, r. 14 | ,, 525 | ,, r. 15 |
| ,, r. 15 | ,, 526 | ,, r. 16 |
| ,, r. 16 | ,, 527 | ,, r. 17 |
| ,, r. 17 | ,, 528 | ,, r. 18 |
| ,, r. 18 | ,, 529 | ,, r. 19 |
| ,, r. 19 | ,, 530 | ,, r. 20 |
| ,, r. 20 | ,, 531 | ,, r. 21 |
| ,, r. 21 (1) to (3) | ,, 532 | ,, r. 22 (1) to (3) |
| ,, r. 21 (4) & (5) | ,, New | ,, r. 22 (4) & (5) |
| ,, r. 22 | Section 533 | ,, r. 23 |
| ,, r. 23 | ,, 536 | ,, r. 24 |
| ,, r. 24 | ,, 537 | ,, r. 25 |
| ,, r. 25 | ,, 538 | ,, r. 26 |
| ,, r. 26 | ,, 539 | ,, r. 27 |
| ,, r. 27 | ,, 540 | ,, r. 28 |
| ,, r. 28 | ,, 541 | ,, r. 29 |
| ,, r. 29 | ,, 542 | ,, r. 30 |
| ,, r. 30 | ,, 545 | ,, r. 31 |
| ,, r. 31 | Section 546 | ,, r. 32 |
| ,, r. 32 | New | ,, r. 33 |
| ,, r. 33 | ,, | ,, r. 34 |
| ,, r. 34 | Section 548 | ,, r. 35 |
| ,, r. 35 | ,, 549 | ,, r. 36 |
| ,, r. 36 | ,, 550 | ,, r. 37 |
| Or. 41, r. 1 | Cf. Section 556 | Or. 42, r. 1 |
| Or. 42, r. 1 | ,, 557 | Or. 43, r. 1 |
| ,, r. 2 | ,, 559 | ,, r. 2 |
| Or. 43, r. 1 | Section 561 | Or. 44, r. 1 |
| ,, r. 2 | ,, 562 | ,, r. 2 |
| Or. 44, r. 1 | ,, 563 | Or. 46, r. 1 |
| ,, r. 2 | ,, 564 | ,, r. 2 |
| ,, r. 3 | ,, 565 | ,, r. 3 |
| ,, r. 4 | ,, 566 | ,, r. 4 |
| ,, r. 5 | ,, 567 | ,, r. 5 |
| Or. 45, r. 1 | ,, 569 | Or. 47, r. 1 |

TABLE B.—(*Concld.*)

| Section and order and Rule of the Regulation. | Section of the Code, Regulation II of 1065. | Section and Order and Rule of the British Indian Code, Act V of 1908. |
|---|---|---|
| Or. 45, r. 2 | Section 570 | Or. 47, r. 2 |
| „ r. 3 | „ 571 | „ r. 3 |
| „ r. 4 | „ 572 | „ r. 4 |
| „ r. 5 | „ 573 | „ r. 5 |
| „ r. 6 | „ 574 | „ r. 6 |
| „ r. 7 | „ 575 | „ r. 7 |
| „ r. 8 | „ 576 | „ r. 8 |
| „ r. 9 | Sec. 575, last paragraph. | „ r. 9 |
| Or. 46, r. 1 | Section 87 | Or. 48, r. 1 |
| „ r. 2 | Cf. Section 88 & 117 | „ r. 2 |
| „ r. 3 | „ 582 | „ r. 3 |
| Or. 47, r. 1 | New | Or. 50, r. 1 |

# INDEX

TO

## THE CODE OF CIVIL PROCEDURE.


ABANDONMENT—

of part of claim by plaintiff— Or. 23 r. 1 (1)

ABATEMENT—

appeal,—of— Or. 22, r. 11
application to set aside,— Or. 22, r. 9 (2)
death of party—no abatement by—if right to sue survives— Or. 22, r. 1
——if after hearing and before judgment—no,— Or. 22, r. 6
——plaintiff or defendant— Or. 22, r. 2; Or. 22, r. 3; Or. 22, r. 4
effect of abatement or dismissal under Or. 22,— Or. 22, r. 9
execution proceedings—no abatement in— Or. 22, r. 12
extent of abatement— Or. 22, r. 3 (2); Or. 22, r. 4 (3)
insolvency of plaintiff—suit not abated by— Or. 22, r. 8
legal representative—determination of question as to,— Or. 22, r. 5
marriage of female party—suit not abated by— Or. 22, r. 7

ABUSE OF PROCESS—

inherent powers of Court to prevent,— S. 115

ACCOUNTS—

account books cannot be attached— S. 62 (1) (d)
——in current use—receiving in evidence copies of— Or. 13, r. 5
agent and principal,—accounts in suits between— Or. 20, r. 16
commission to examine,— S. 61, Or. 26, r. 11

ACCOUNTS.—(*Concld.*)

legal representative—power of Court executing decree to compel—to produce,— S. 43 (2)
mode of taking,—special directions as to— Or. 20, r. 17
partnership,— Or. 20, r. 15
partner's share,—attachment of—and,— Or. 21, r. 47 (2)
receiver—liability of—to account— Or. 38 r. 3 (b)
trusts—suits relating to public—directing accounts in— S. 72
unsettled,—plaint in suits for recovery of amount due on— Or. 7, r. 2

ACKNOWLEDGMENT—

*See* Service.

ACQUIESCENCE IN PLACE OF SUING—

*See* Jurisdiction.

ADDITION—

*See* Parties.

ADJOURNMENT—

sale in execution,—of— Or. 21, r. 67

ADJUSTMENT OF ACCOUNTS—

commission for,— Or. 26, r. 11

ADJUSTMENT OF DECREE—

attached decree—adjustment of—when ineffectual— Or. 21, r. 51 (6)
certified,—must be— Or. 21, r. 2 (2)

ADJUSTMENT OF SUITS—

See Compromise of Suits.

ADMINISTRATION SUIT—
decree in,— Or. 20, r. 13
forms of plaint in,— App. A, Forms Nos. 41-43.

ADMINISTRATOR—
claims by or against,—not to be joined with claims by or against him personally— Or. 2, r. 5
suits by or against,— Or. 31
*See* Executor.

ADMISSIBILITY—
of evidence taken on commission,— Or. 26, r. 8
of statements made on belief in affidavits— Or. 19, r. 3

ADMISSION—
costs of proving document in certain cases— Or. 12, r. 2
interpleader suits,—of parties in— Or. 34, r. 4 (2)
judgment on,— Or. 12, r. 6
notice to admit documents— Or. 12 r. 3

ADVERTISEMENT—
notice by public,—where numerous parties— Or. 1, r. 8 (1)
proclamation of sale,—of— Or. 21, r. 65

AFFIDAVITS—*See* Affidavit of documents.
interrogatories,—as to— Or. 11, r. 6
Or. 11, rr. 8, 11
——in answer to—form of,— Or. 11, r. 9
——objections to—in answer— Or 11, r. 6
oath on,—by whom to be administered— S 103
pleader,—of—about signature of admissions,— Or. 12, r. 7
power to order any fact to be proved by,— S 27 (c), Or. 19, r. 1
——attendance of deponent for cross-examination— Or. 19, r. 2

AFFIDAVIT OF DOCUMENTS—
*See* Discovery.
inspection of documents referred to in,— Or. 11, r. 15
lunatic—from— Or. 11, r. 23
minor,—from— Or. 11, r. 23
non-compliance with order for,— Or. 11, r. 21
order for,— S 27, Or. 11, r. 12

AGENT—
Government—agents authorised to act for— Or. 27, r. 2
——agents authorised to receive process for,— Or. 27, r. 4
interpleader suit by,— Or. 34, r. 5
principal and agent—suit for accounts between— Or. 20, r. 16
recognised agent—appearance and application by— Or. 3, rr. 1-3
in suits by or against Princes— S. 66-B
——the Government of His Magesty the King Emperor of India— S. 66-A
service of process on recognised agent— Or. 3, r. 3
special agent to accept service of process— Or. 3, r. 6
service of summons on agent of defendant— Or. 5, rr. 12-14
——when defendant resides out of Travancore and has no agent to accept service— Or. 5, r. 24

AGREEMENT—
adjustment of suit by— Or. 23, r. 3
case for opinion of Court,—to state— Or. 35 r. 1
disability—persons under—agreement on behalf of— S. 111
guardian *ad litem*—compromise by— Or. 32, r. 7
next-friend—compromise by— Or. 32, r. 7
to state questions of law or fact in form of issues— Or. 14, r. 6

AGRICULTURIST—
exemption from attachment of houses belonging to— S. 52 (1) (c)
——of implements and cattle— S. 52 (1) (b)
*See* Agricultural Produce.

AGRICULTURAL PRODUCE—
attachment of,— Or. 21, r. 42
——under—provisions as to— Or. 21, r. 43
exemption of,—from attachment— S. 52 (1) (b); S. 53
growing crop—attachment of—which cannot be stored— Or. 21, r. 43 (5)
——order prohibiting removal of,— Or. 21, r. 43 (4)
——place of sale of— Or. 21, r. 71 (1)
——special provisions relating to sale of— Or. 21, r. 72
sale of,— Or. 21, r. 71

ALIENATION—
of attached property—how far void— S. 56
——with leave of Court— Or. 21, r. 80

ALLEGATIONS—
ascertainment whether pleadings are admitted or denied— Or. 10, r. 1

ALLOWANCE—
attachment of,—of public officer— Or. 21, r. 46
exemption from attachment of,—of public officer, etc. S. 52 (1) (h) and (i)
judgment-debtor—subsistence allowance of—in jail— S. 49, Or. 21, r. 37

ALTERATION—
of judgment— S. 116

ALTERNATIVE—
relief in suits for delivery of movable property— Or. 20, r. 10

AMENDMENT—
application for execution,—of— Or. 21, r. 15
decree,—of— S. 116
failure to amend pleadings within time specified by Court— Or. 6, r. 18
general powers of Court to amend proceedings in a suit— S. 117
issues—power of Court to amend— Or. 14, r. 5 (1)
memorandum of appeal,—of— O. 4?, r. 3
mistake arising from accidental omission— S. 116
pleadings,—of— Or. 6, r. 17
proceedings in suit,—of— S. 117

APPEAL—
abatement of,— Or. 22, r. 11
additional evidence in appeal— Or. 40, r. 27
appellate decrees,—appeal from,— Or. 41, r. 1
Court—appellate—to have same powers as original Court,— S. 85 (2)
——execution,—stay of,—by,— Or. 40, r. 5
costs,—direction as to,—in decree in appeal— Or. 40, r. 34 (3)
cross-objections—*See* Cross-objections against appellant,— Or. 40, r. 21
——effect of withdrawal or dismissal of appeal on,—Or. 40, r. 21 (4)
——who may file,— Or. 40, r. 21 (1)
decree,—appeal from,— S. 76
appeal from consent decree,— S. 76 (3)
appeal from *ex parte* decree,— S. 76 (2)
appeal from preliminary decree,— S. 77
appeal from final,—where no appeal from preliminary decree— S. 77
copies of appellate decree— Or. 40, rr. 35, 36

APPEAL.—(*Contd.*)

in appeal—date and contents of,— Or. 40, r. 34

dismissal of—*See* Dismissal of appeal.

evidence—additional—*See* Additional Evidence.

——on record where sufficient—Court may determine case— Or. 40, r. 23

——where lower Court has refused to admit— Or. 40, r. 26 (1) (*a*)

exhibits—copies of—when appeal preferred— Or. 40, r. 12 (3)

ex parte decree—hearing of appeal ex parte— Or. 40, r. 16 (2)

——restoring of appeal heard ex parte— Or. 40, r. 20

fixing day of hearing of appeal— Or. 40, r. 11

form of appeal— Or. 40, r. 1

final decree—appeal from—where no appeal from preliminary decree— S. 77

general power to pass any proper decree or order— Or. 40, r. 32

grounds which may be taken in appeal— Or. 40, r. 2

hearing of appeal— Or. 40, rr. 15-28

High Court—power of—to determine issues of fact in second appeal— S. 81

immovable property,—stay of sale of—pending appeal— Or. 40, r. 6 (2)

irregularity,—appellate Court cannot interfere in cases of mere— S. 78

issues for trial to lower Court—when appellate Court may refer— Or. 40, r. 24

——of fact in second appeal—power of High Court to determine— S. 81

judges—dissent of any—from the decision of Court—to be recorded— Or. 40, r. 33

APPEAL.—(*Contd.*)

——dissenting from judgment need not sign decree— Or. 40, r. 34, proviso

judgment—furnishing copies of—to parties— Or. 40, r. 35

——in appeal— Or. 40, rr. 29-33

———contents, date and signature of— Or. 40, r. 30

leave of Court to urge objections not set forth in memo of appeal— Or. 40, r. 2

memorandum of appeal,—contents and accompaniments of— Or. 40, r. 1

——grounds not set forth in— Or. 40, r. 2

———registry of— Or. 40, r. 9

———rejection or amendment of— Or. 40, r. 3

notice of appeal to lower Court— Or. 40, r. 12 (1)

——of day of hearing— Or. 40, r. 13

objection to findings on issues referred— Or. 40, r. 25

Orders—appeal from—*See* Appeal from Orders.

pauper application for leave to appeal as— Or. 43, r. 1

plaint—order rejecting— S. 2 (2)

point for determination to be stated in judgment— Or. 40, r. 30

powers of appellate Court— S. 85
Or. 40, r. 32

re-admission of appeal dismissed for default— Or. 40, r. 18

reasons for decision to be stated in judgment— Or. 40, r. 30

remand case to lower Court— Or. 40, r. 22

——appeal from order of— S. 83 (2)

restoring of appeal heard exparte— Or. 40, r. 20

respondents—cross-objections by— Or. 40, r. 21

——power to add persons interested as— Or. 40, r. 19

APPEAL.—(Concld.)

re-transfer of,—from one Court to another— S. 23

reversal of whole decree in appeal on grounds common to all plaintiffs or defendants— Or. 40, r. 4

right to begin— Or. 40, r. 15

sale—stay of—of immovable property pending— Or. 40, r. 6 (2)

saving of present right of appeal— S. 118

second appeal from appellate decree,— S. 79
See Second Appeal.

security for costs—appeal from order as to—
See Appeal from Orders.

——appellant—from— Or. 40, r. 10

set-off—appeal from decree relating to— Or. 20, r. 10 (2)

stay of execution by appellate Court— Or. 40, r. 5

——proceedings under decree—appeal does not operate as— Or. 40, r. 5 (1)

——sale of immovable property pending appeal—Or. 40, r. 6 (2)

transfer of suit, appeal or other proceeding— S. 23

transmission of papers to appellate Court— Or. 40, r. 12 (2)

Travancore-where appellant resides out of—and security for costs— Or. 40, r. 10 (1)

withdrawal of appeal—effect of—on cross-objections— Or. 40, r. 21 (4)

witness—examination of—by appellate Court— Or. 40, r. 27

APPEAL FROM ORDERS—

abatement of suit—refusing to set aside— Or. 42, r. 1 (14)

appeal—refusing to re-admit— Or. 42, r. 1 (25)

——re-hear appeal—refusing to— Or. 42, r. 1 (25)

APPEAL FROM ORDERS.—(Contd.)

arbitration,—arising out of—agreement to refer to— S. 82 (1) (d)

——superseding— S. 82 (1) (a)

Attachment of property of witness—directing— Or. 42, r. 1 (9)

award—filing or refusing to file— S. 82 (1) (e)

——modifying or correcting— S. 82 (1) (c)

——order on—stated in the form of a special case— S. 82 (1) (b)

compromise of suit—recording or refusing to record— Or. 42, r. 1 (16)

Court to which appeal lies from orders— S. 84

discovery—order made on non-compliance with order for— Or. 42, r. 1 (8)

dismissal of suit—refusing to set aside— Or. 42, r. 1 (14)

*ex parte* decree—rejecting application to set aside—Or. 42, r. 1 (6)

injunction—discharging or setting aside— Or. 37, r. 4
Or. 42, r. 1 (21)

——temporary—refusing or granting— Or. 42, r. 1 (21)

interpleader suits—orders made in— Or. 42, r. 1 (19)

judgment on failure to file written statement— Or. 42, r. 1 (4)

——on refusal to give evidence— Or. 42, r. 1 (10)

——on failure of pleader to answer— Or. 42, r. 1 (7)

judgment-debtor—disallowing objection by—to draft of document for execution of which decree is passed— Or. 42, r. 1 (12)

leave—giving or refusing—for assignee to be joined as party— Or. 42, r. 1 (15)

APPEAL FROM ORDERS.—(*Concld.*)

orders from which appeals lie— S. 82, Or. 42

plaint-returning—to be presented to proper Court— Or. 42, r. 1 (3)

plaintiff's non-appearance—rejecting application to restore suit dismissed for— Or. 42, r. 1 (5)

procedure in appeals from orders— S. 86, Or. 42, r. 2

re-admit—refusing to—an appeal— Or. 42, r. 1 (25)

receiver—granting application to appoint— Or. 42, r. 1 (22)

rehear—refusing to—an appeal— Or. 42, r. 1 (25)

remand—order of— S. 83

remand of case— Or. 42, r. 1 (26)

restitution—directing— S. 108

review—granting application for— Or. 42, r. 1 (27)

rules relating to appeals from orders— Or. 42, r. 2

sale of immoveable property—under Or. 21, r. 89 Or. 42, r. 1 (13)

when decree-holder purchases without leave of Court— Or. 42, r. 1 (13)

second appeal—
*See* Second Appeal.

security for costs,—refusing to set aside order of dismissal for failure to furnish— Or. 42, r. 1 (17)

suit—compromise of—recording or refusing to record— Or. 42, r. 1 (16)

——to restore—rejecting application—dismissed for plaintiff's non-appearance— Or. 42, r. 1 (5)

witness—directing attachment of property of— Or. 42, r. 1 (9)

APPELLATE COURT—
*See* Appeal.

APPEARANCE—

agent,—by recognised— Or. 3, r. 1

defendants—appearance of one of several—for others— Or. 1, r 12

dismissal of suit for default bars fresh suit— Or. 9, r. 9

exemption of certain persons from personal appearance— Ss. 97, 98

firm—appearance of partners—where suit brought in firm name— Or. 30, r. 6

Government—fixing of time for appearance on behalf of— Or. 27, r. 5

non-appearance of parties— Or. 9, rr. 2-12

parties to appear on day fixed in summons— Or. 9, r. 1

partners,—where sued in firm name—appearance of— Or. 30, r. 6

person—Court may order appearance of party in— Or. 5, r. 3 Or. 10, r. 4 (1)

——consequence of non-attendance in— Or. 9, r. 12

pleader—appearance of party by— Or. 3, r. 1

procedure where defendant has good cause for previous non-appearance— Or. 9, r. 7

restoration of suit when sufficient cause shown for non-appearance— Or. 9, r. 9

women—exemption of—from personal appearance,— S. 97

APPLICATION—

See Amendment—Decree *ex parte*—Execution of decree.

ARBITRATION—

Appeal from orders about arbitration or awards—*See* Appeal from Orders.

application by parties to suit for order of reference— Or. 39, r. 1

arbitrator—appointment of— Or. 39, r. 2

——of new— Or. 39, r. 5

consequence of disobedience to summons to attend before,— Or. 39, r. 7.

arbitrator—corruption or misconduct of— Or. 39, r. 15 (1) (*a*)

——death of— Or. 39, r. 5 (*b*) (i)

——difference of opinion among— Or. 39, r. 4

——empowering—to appoint an umpire— Or. 39, r. 4

——leaving Travancore— Or. 39, r. 5 (*b*) (iii)

——notice for appointment of new— Or. 39, r. 5

——power of— Or. 39, r. 6

——refusing to act— Or. 39, r. 5 (*b*) (ii)

——statement of special case by— Or. 39, r. 11

summoning of witnesses before— Or. 39, r. 7

award—execution—where award indefinite— Or. 39, r. 14 (*b*)

——expiration of period fixed by Court—where award is made after—Or. 39, r. 15 (1) (*c*)

——extension of time for making— Or. 39, r. 8

——fixing of time for making— Or. 39, r. 3 (1)

——judgment on award— Or. 39, r. 16

——modify or correct award —power to— Or. 39, r. 12

——notice of filing of award—Or. 39, r. 10

——part of award upon matter not referred to arbitration— Or. 39, r. (12) (*a*)

ARBITRATION.—(*Contd.*)

——remit—power to— Or. 39, r. 14

——setting aside award—grounds for— Or. 39, r. 15

——signing and filing of award— Or. 39, r. 10

award—superseding arbitration—where award is made after order— Or. 39, r. 15 (1) (*c*)

where award has left undetermined any of the matters referred to arbitration— Or. 39, r. 14 (*a*)

costs of arbitration— Or. 39, r. 13

death of arbitrator or umpire— Or. 39, r. 5 (*b*) (i)

execution when award indefinite— Or. 39, r. 14 (*b*)

fraudulent concealment of matter which ought to have been disclosed— Or. 39, r. 15 (1) (*b*)

order of reference in a suit— Or. 39, r. 3

——effect of— Or. 39, r. 3 (2)

——superseding— Or. 39, r. 5 (2) Or. 39, r. 15 (2)

——notice of application to file— Or. 39, r. 17 (3)

——on an agreement to refer— Or. 39, rr. 17 & 18

——application to file agreement— Or. 39, r. 17

——appointment of arbitrator— Or. 39, r. 17 (4)

——stay of suit— Or. 39, r. 18

reference to—how far governed by Order XXXIX S. 69

umpire—*see* Arbitrator.

——appointment of— Or. 39, r. 4 (1) (*a*)

umpire—when—to arbitrate— Or. 39, r. 9

award—application to file —made on a reference— Or. 39, r. 20

——decree on— Or. 39, r. 21 (2)

——filing and enforcement of— Or. 39, r. 21

ARBITRATION,—(*Concld.*)

——notice to show cause why award should not be filed— Or. 39, r. 20 (3)

court to which application should be made— Or. 39, r. 20

ARREST AND DETENTION—

*See* Arrest before Judgment.

appeal from order for detention— S. 82, cl. (*h*)

arrest other than in execution of decrees— S. 99

before judgment— S. 74
Or. 36, rr. 1-4

compensation for wrongful—before judgment— S. 75

conjugal rights—discretion of Courts in decree for restitution of— Or. 21, r. 30

decree—in execution of— S. 47

decrees enforceable by detention in prison— Or. 21, rr. 28-30

directors—of—in decree against corporation— Or. 21, r. 30 (2)

execution,—in—of decree— S. 47

exemption of persons serving in or with His Majesty's army—from,— Ss. 99-A, 99-B, 99-C

exemption of women from arrest— S. 48

exempt from—judicial officer—when— S. 100 (1)

——parties to suit and their pleaders—when— S. 100 (2)

——public officer—when— S. 66 (*a*)

——witnesses—when— S. 100 (2)

——women—when— S. 48

injunction,—of person guilty of disobedience to order granting— Or. 37, r. 2 (3)

judgment-debtor — *immediate* arrest of—on decree for payment of money— Or. 21, r. 9 (1)

ARREST AND DETENTION.—(*Contd.*)

——insolvent — procedure when judgment-debtor expresses his intention to be declared an— S. 47, cl. 4

——procedure on appearance of—in obedience to notice or after arrest— S. 47
Or. 21, r. 38

——re-arrest of— S. 50 (2)
Or. 21, r. 38 (4)

——release of Ss. 50, 51

——when unable to pay—Court may disallow application for arrest— Or. 21, r. 38 (1)

jurisdiction—where person to be arrested is outside—

(1) and arrest is to be made in execution of a decree— S. 36

(2) where it is to be made under other provisions of the Code— S. 101

notice before arrest— Or. 21, r. 35

pardanashin women—when not exempt from arrest— S. 97

period of detention— S. 50

public—inconvenience to—and arrest of certain persons— S. 47 (2)

re-arrest— S. 50 (2)

release not a discharge of debt— S. 50 (3)

subsistence allowance— S. 49
Or. 21, r. 37

surety for appearance of judgment-debtor under arrest— S. 47 (4)

witness—arrest of defaulting— Or. 16, r. 10 (3)


**Arrest before Judgment.**


compensation for wrongful arrest— S. 75

defendant—when—may be arrested before judgment— Or. 36, r. 1

ARREST AND DETENTION.—(*Concld.*)

period of detention in prison— Or. 36, r. 4

security-order to furnish—for appearance— Or. 36, r. 2

surety—procedure on application by—to be discharged— Or. 36, r. 3

ASSETS –

*See* Rateable distribution.

ASSIGNMENT—

of decree—*See* Transfer of Decree.

of interest in suit— Or. 22, r. 10

of cross-decree and execution— Or. 21, r. 16

*pendente lite*— Or. 22, r. 10

ATTACHMENT—

actual seizure of moveable property in possession of judgment-debtor— Or. 21, r. 41

adjustment of attached decree when ineffectual— Or. 21, r. 51

agricultural produce—*See* Agricultural produce.

——attachment of— Or. 21, r. 42

assets—claims for rateable distribution of—are claims enforceable under attachment— S. 56, Expln.

compensation for wrongful— S. 75

current coin or currency notes—where property attached is— Or. 21, r. 54

damages—attachment of—right to sue for— S. 52

debt—attachment of— Or. 21, r. 44

decrees—attachment of— Or. 21, r. 51

default in proceeding with execution after— Or. 21, r. 55

dwelling house—seizure of property in— S. 54

firm,—in case of decree against— Or. 21, r. 48

growing crop—attachment of— Or. 21, r. 42

ATTACHMENT.—(*Contd.*)

growing crop which cannot be stored—attachment of— Or. 21, r. 43 (5)

immoveable property—attachment of— Or. 21, r. 52

immoveable property—particulars in application for attachment of— Or. 21, r. 11

judgment-debtor—examination of—as to his property— Or. 21, r. 39

jurisdiction—where property to be attached is outside—

(1) and it is to be attached in execution of a decree— S. 36

(2) where it is to be attached under other provisions of Code— S. 101

labourer—wages of— S. 52 (1)

land paying revenue to Government—attachment of— Or. 21, r. 52

maintenance—right to future— S. 52

mesne profits—before determination of amount of— Or. 21, r. 40

money-decrees—value of property attached in case of— Or. 21, r. 15

moveable property in possession of judgment-debtor— Or. 21, r. 41

moveable property not in judgment-debtor's possession— Or. 21, r. 10

negotiable instruments—attachment of— Or. 21, r. 49

notice in case of decree passed by another Court— Or. 21, r. 51 (1)

partnership property—when attachable— Or. 21, r. 47 (1)
" 48 (1)

ATTACHMENT,—(*Contd.*)

precept—attachment under— S. 39

preliminary decree for possession and rents—attachment under— Or. 21, r. 40

property attached in execution of decrees of several Courts— S. 55

——liable or not liable to attachment— S. 52

——in custody of Court or public officer— Or. 21, r. 50

——of defaulting witness— Or. 16, r. 10 (3)
Or. 16, r. 12

——of person disobeying order granting injunction— Or. 37, r. 2 (3)

removal of,— Or. 21, r. 58

salary of public officer, &c. S. 52 (1)
Or. 21, r. 46

shares in a corporation— Or. 21, r. 44

share of judgment-debtor in movables— Or. 21, r. 45

title or priority questions of—by what Court to be determined— Or. 21, r. 50

transfer of attached property— S. 56

warrant of— Or. 21, r. 22

**Attachment before judgment—** S. 74
Or. 36, rr. 5-12

appeal from orders relating to— Or. 42, r. 1

compensation for wrongful attachment— S 75

**Investigation of claims and objections—**

claim—when to be allowed— Or. 21, r. 58

——disallowed— Or. 21, r. 59

evidence in support of claim or objection— Or. 21, r. 57

ATTACHMENT.—(*Concld.*)

mortgage claim—continuance of attachment subject to— Or. 21, r. 60

objection to attachment by third party— Or. 21, r. 56

——when allowed— Or. 21, r. 58

——disallowed— Or. 21, r. 59

order allowing or disallowing claim—when conclusive— Or. 21, r. 61

sale—postponement of—pending inquiry into claim— Or. 21, r. 56

suit—declaratory—by defeated party— Or. 21, r. 61

trust—property held upon— Or. 21, r. 58

ATTENDANCE—

corporation—officer of—power to require personal attendance of— Or 29, r. 3

duty of witness to attend at each hearing— Or. 16, rr. 15, 16

of person able to answer questions in suit against Government— Or. 27, r. 6

witnesses before Commissioner— Or. 26, r. 17

——to give evidence or produce documents—power to compel— S. 27 (*b*)

witness—when not required to attend in person— Or. 16, r. 19

AUCTION—

court-sale as a rule to be held by public auction— Or. 21, r. 63

AUCTION-PURCHASER—*See* Possession—Sale—Purchaser's title.

benami purchase— S. 58

certificate of sale to— Or. 21, r. 91

compensation to—on setting aside sale— Or. 21, r. 86

default in payment of deposit by—at court-sale— Or. 21, r. 81

AUCTION-PURCHASER.—(*Concld.*)

- delivery of possession to— Or. 21, rr. 92, 93
- deposit by—at court-sale— Or. 21, r. 81
- dispossession by— Or. 21, r. 97
- re-sale—defaulting purchaser answerable for loss on— Or. 21, r. 68
- resistance to delivery of possession to— Or. 21, r. 94
- sale—application to set aside—where judgment-debtor has no saleable interest— Or. 21, r. 88
- ——certificate of—to— Or. 21, r. 91
- ——setting aside—compensation to purchaser on— Or. 21, r. 86
- title of— S. 57
- vesting of property in— S. 57

AWARD—*See* Arbitration

BENAMIDAR—

- suit by third person alleging certified purchaser is a benamidar— S. 58 (2)

BID—

- liberty to— Or. 21, r. 69
- restriction on bidding by officer— Or. 21, r. 70

BILL OF EXCHANGE—*See* Negotiable Instrument.

- joinder of parties liable on same,— Or. 1, r. 6

BREACH OF TRUST—

- particulars of—to be stated in pleadings— Or. 6, r. 4

BUSINESS—

- agent—service of summons on—by whom defendant carries on,— Or. 5, r. 13
- business books — verified copies of entries in—instead of inspection— Or. 11, r. 19
- corporation—where deemed to carry on,— S. 19
- Court—transfer of business from one—to another— S. 114

BUSINESS.—(*Concld.*)

- jurisdiction—from place of business— S. 15, S. 19
- suit against person carrying on—in name other than his own— Or. 30, r. 10
- summons—affixing copy of—on outer door of defendant's place of,— Or. 5, r. 17
- transfer of,—from one Court to another— S. 114

CAUSE OF ACTION—

- decree not to be reversed in appeal for misjoinder of— S. 78
- different causes of action—separate trials of— Or. 2, r. 6
- joinder of causes of action— Or. 2, r. 3
- objection as to misjoinder of,—when to be taken— Or. 2, r. 7
- pauper—rejection of application to sue as—if no cause of action— Or. 33, r. 5 (*d*)
- plaint must contain facts constituting— Or. 7, r. 1 (*e*)
- ——rejection of—when it does not disclose,— Or. 7, r. 11 (*a*)
- plaintiff seeking relief in respect of several distinct,— Or. 7, r. 8
- separate trials of different causes of action— Or. 2, r. 6
- splitting causes of action— Or. 2, r. 2
- successive claims arising under same obligation— Or. 2, r. 2, Expln.
- suit—rules precluding further—on same cause of action— S. 11

CERTIFICATE—

- execution,—on transfer of decree for— Or. 21, r. 5 (*b*)
- judgment-debt—payment of—out of Court— Or. 21, r. 2

CERTIFICATE.—(*Concld.*)

judgment-debtor,—authorising—to mortgage, &c., his attached property—Or. 21, r. 80 (2)

sale—certificate of—to bear date on which sale becomes absolute— Or. 21, r. 91

——to purchase at court-sale— Or. 21, r. 91

CERTIFYING PAYMENT—

payment of judgment-debt out of Court to be certified to Court— Or. 21, r. 2

CHARGE—

interpleader suits—when plaintiff entitled to a charge for costs in— Or. 34, r. 6

pauper suits,—of Government for court-fees in— Or. 33, r. 10

CHARITIES—

suits relating to public— S. 72
*See* Public Charities.

CHEQUE—

attachment,—liable to—in execution of decree— S. 52 (1)

CIVIL NATURE—

suits of a— S. 7

CLAIMS—*See* Attachment.

investigation of claims to attached property— Or. 21, r. 56

investigation of claims to property attached before judgment— Or. 36, r. 8

sale in execution,—postponement of—pending inquiry into claims— Or. 21, r. 56 (2)

CLIENT—*See* Pleader.

death of client or pleader determines pleader's appointment— Or. 3, r. 4 (2)

CODE OF CIVIL PROCEDURE—

application of— S. 1

Code includes Rules— S. 2 (1)

inherent powers of Courts—provisions of Code not to affect— S. 115

CODE OF CIVIL PROCEDURE.—(*Concld.*)

miscellaneous proceedings,—procedure in Code for suits to apply to— S. 105

Small Cause suits—extent of application of,—to— S. 6
Or. 47

COMMISSION—

commissioner—powers of— Or. 26, r. 16

*ex parte*—when commissioner may proceed— Or. 26, r. 18 (2)

expenses of—to be paid into Court before issue of,— Or. 26, r. 15

foreign Courts—commissions issued by— S. 63

letter of request in lieu of,— S. 62

parties—appearance of—before commissioner— Or. 26, r. 18 (1)

pauper applicant—when may be ordered to be examined on,— Or. 33, r. 4 (2)

power of Court to issue,— S. 61

purposes for which commissions may be issued— S. 61

witness—attendance and examination of—before commissioner,— Or. 26, r. 17 (1)

——issue of process to,—on application of commissioner— Or. 26, r. 17 (2)

To examine witnesses— Or. 26, rr. 1-8

For local investigation— Or. 26, rr. 9-10

To examine accounts— Or. 26, rr. 11-12

To make partition— Or. 26, rr. 13, 14

COMMISSIONER—

*See* Commission.

COMPANY—*See* Corporation.

COMPENSATION—

arrest or attachment before judgment—in case of— S. 75

COMPENSATION.—(*Concld.*)

award of,—for wrongful arrest,—attachment or injunction— S. 75 (1)

injunction—interim—in case of— S. 75

suit—award of compensation under S. 75 bars— S. 75 (2)

COMPROMISE OF SUIT—

appeal from order recording or refusing to record— Or. 42, r. 1, cl. 16

decree in terms of,— Or. 23, r. 3

guardian of minor,—by— Or. 32, r. 7

minor,—by guardian or next-friend of— Or. 32, r. 7

parties,—by—out of Court— Or. 23, r. 3

CONCISE STATEMENT— Or. 7, r. 9 (1)

CONDITION PRECEDENT—

when to be pleaded— Or. 6, r. 6

CONDUCT OF SUIT—

where parties numerous— Or. 1, r. 11

CONJUGAL RIGHTS—*See* Restitution of conjugal rights.

CONSENT—

Dewan,—of—to suits relating to public charities— S. 72

Dewan,—of—to suits relating to public nuisances— S. 71

disability—consent to proceedings in suits on behalf of persons under,— S. 111

guardian *ad litem*—no person to be appointed—without his consent— Or. 32, r. 4 (3)

next-friend—no person to be added as—without his consent— Or. 1, r. 10 (3)

plaintiff—no person to be added as—without his consent— Or. 1, r. 10 (3)

withdrawal of suit by one plaintiff without consent of others— Or. 23, r. 1 (4)

CONSENT DECREE—

appeal from,— S. 76 (3)

decree by consent of parties on a compromise,— Or. 23, r. 3

CONTEMPT OF COURT—

arrest for,—no exemption from— S. 100 (2)

CONTRACT—

denial of,—in pleadings— Or. 6, r. 8

implied,—averment of— Or. 6, r. 12

injunction—temporary—to restrain breach of,— Or. 37, r. 2

joinder of parties liable on same contract— Or. 1, r. 6

letters—contract constituted by—and pleadings— Or. 6, r 12

specific performance of,—decree for—mode of execution of— Or. 21, r. 30

COPY—

execution—application for and copy of decree— Or. 21, r. 9 (3)

——transfer of decree for—and copy of decree— Or. 21, r. 5 (*a*)

exhibits—copies of—when appeal preferred— Or. 40, r. 12 (3)

judgment and decree in appeal—copies of—furnished to parties— Or. 40, r. 35

memo of appeal—copies of judgment and decree to accompany— Or. 40, r. 1

CORPORATION—

attendance—personal—of officer of,—power to require— Or. 29, r. 3

business—where deemed to carry on—and place of suing— S. 19, Expln. II

decree against,—mode of executing— Or. 21, r. 30 (2)

examination of officer of,—as to property of,— Or. 21, r. 39

injunction against,— Or. 37, r. 5

CORPORATION.—(*Concld.*)

interrogatories—to,—delivery of— Or. 11, r. 5
place of suing,— S. 19, Expln. II
pleadings—subscription and verification of— Or. 29, r. 1
shares in,—attachment of— Or. 21, r. 44
——delivery of—in execution— Or. 21, r. 76 (3)
——sale of—in execution— Or. 21, r. 73
——transfer of—sold in execution,— Or. 21, r. 77
suits by or against,— Or. 29
summons—service of—upon,— Or. 29, r. 2

CO-SHARER—

bid of,—to have preference in sale of property— Or. 21, r. 74 (3)
Or. 21, r. 85

COSTS—

adjournment—costs of— Or. 17, r. 1
affidavit containing hearsay or argumentative matters— Or. 19, r. 3
arbitration—costs of— Or. 39, r. 13
decree to give directions as to,— Or. 20, r. 6 (2)
direction for,—in decree in appeal— Or. 40, r. 34
discretion of Court—costs to be in— S. 32 (1)
document,—of proving—when notice to admit not given or complied with— Or. 12, r. 2
event—costs as a rule to follow— S. 32 (2)
facts,—of proving—when notice to admit not complied with— Or. 12, r. 4
guardian *ad litem*—costs incurred by officer of court acting as— Or. 32, r. 4 (4)
interest on,— S. 32 (3)
interpleader suits,—in— Or. 34, rr. 3, 4, 6
interrogatories,—of— Or. 11, r. 3

COSTS.—(*Contd.*)

jurisdiction—absence of—no bar to exercise by Court of power as to,— S. 32 (1)
lien of pleader for,—where set-off claimed by defendant— Or. 8, r. 6 (2)
of notice for admission or production of unnecessary documents— Or. 12, r. 9
officer of Court,—incurred by—as guardian *ad litem* Or. 32, r. 4 (4)
pauper,—of application for leave to sue—as and of inquiry— Or. 33, r. 16
payment made into Court—costs where— Or. 24, r. 4
pleader—liability of—for costs—in suit on behalf of minor— Or. 32, r. 2 (1)
postponement,—of—occasioned by plaintiff's default as to summons— Or. 9, r. 6 (2)
proclamation of sale—costs not covered by— Or. 21, r. 86 (3)
reference to High Court—cost of— Or. 44, r. 4
refund of costs—order for—on variation or reversal of decree— S. 108 (1)
set-off—and lien of pleader for costs— Or. 8, r. 6 (2)
——Court may direct costs payable to party to be— Or. 20, r. 6 (3)
subsistence allowances—sums disbursed for—to be costs in suit— Or. 21, r. 37 (5)
variation or reversal of decree—order for refund of costs on— S. 108 (1)

**Security for costs of suit—** Or. 25

appeal from order refusing to set aside order of dismissal of suit for failure to give— Or. 42, r. (1)
failure to furnish,—effect of— Or. 25, r. 2

COSTS.—(*Concld.*)

insolvency of plaintiff—security for costs to be given on— Or. 22, r. 8

next-friend retiring—to give security for costs already incurred— Or. 32, r. 8

plaintiff—security for costs from— Or. 25, r. 1

setting aside of order of dismissal for failure to furnish,— Or. 25, r. 2 (2)

**Security for costs in appeal**

appellant—security for costs from— Or. 40, r. 10

consequence of not furnishing— Or. 40, r. 10 (2)

COUNTER-CLAIM—

rules as to joinder of claims apply to,— Or. 2, r. 4

COURTS—

amend issues—to—powers of,... Or. 14, r. 5

appellate—powers of— S. 85, Or. 40, r. 32

attachment of property in custody of Court— Or. 21, r. 50

Civil Courts to try only suits of a civil nature— S. 7

High Court—power to refer case for opinion of— S. 87

immovable property—sale of—in execution—what Courts can order— Or. 21, r. 79

inherent powers of Courts— S. 115

inspection of property by Courts— Or. 18, r. 17

issues—Court to frame— Or. 14, r. 1 (5)

——power of Court to amend or strike out— Or. 14, r. 5

language of Courts— S. 102

name of Court in which suit brought to be stated in plaint— Or. 7, r. 1 (*a*)

COURTS—(*Concld.*)

papers from its own records or from other Courts,—may send for— Or. 13, r. 10

payment into Court— Or. 24

reference to High Court— S. 87, Or. 44

review—Court to which application for—to be made— S. 88, Or. 46, r. 1

sale of immovable property—in execution—what Courts can order— Or. 21, r. 79

stay of execution—of decree—when Court may order— Or. 21, r. 24

time—power of,—to enlarge— S. 112

transfer of business of one Court to another— S. 114

——suits— Ss. 21-23

transferred decrees—power of Courts in executing— S. 38

COURT-FEES—

deficiency of,—power of Court to allow party to make up— S. 113

Government—right of—to apply for payment of,—in—pauper suits— Or. 33, r. 12

pauper suits—exemption from payment of,—in— Or. 33, r. 8

——recovery of Court-fees in— Or. 33, r. 10

plaint must show value of subject-matter of suit for purpose of,— Or. 7, r. 1

CROP-*See* Agricultural produce.

attachment of,— Or. 21, r. 42

——which does not admit of being stored— Or. 21, r. 43

*interim* order prohibiting removal of growing crop— Or. 21, r. 43

sale of growing crop— Or. 21, rr. 71, 72

CROSS-CLAIMS—

execution in case of— Or. 21, r. 17

mortgage suits,—in— Or. 21, r. 18

CROSS-DECREES—
assignment in case of,— Or. 21, r. 16
execution in case of,— Or. 21, r. 16
mortgage suits,—in— Or. 21, r. 18
CROSS-OBJECTIONS—
dismissal of appeal—effect of—on— Or. 40, r. 21 (4)
form of— Or. 40, r. 21 (2)
time within which—to be filed— Or. 40, r. 21 (1)
withdrawal of appeal—effect of,—on— Or. 40, r. 21 (4)
who may file— Or. 40, r. 21 (1)
DAMAGES—
attachment—mere right to sue for damages not liable to— S. 52 (1)
commission to ascertain— Or. 26, r. 9
defendant need not plead to— Or. 8, r. 3
deposit by defendant in Court in suit—to recover damages— Or. 24, r. 1
pleadings, and matters affecting— Or. 8, r. 8
public nuisance—no special damage necessary for instituting suit relating to— S 71
reversal of decree—and order for payment of damages— S. 108 (1)
variation of decree—and order for payment of damages— S. 108 (1)
DEATH—*See* Abatement.
abatement of suit, and death of party— Or. 22, r. 1
arbitrator or umpire—death of— Or. 39, r. 5 (1) (*b*) (1)
client—death of—determines pleader's appointment— Or. 3, r. 4 (2)
guardian *ad litem*—death of— Or. 32, r. 11
DEATH,—(*Concld.*)
hearing—death of party after—but before judgment— Or. 22, r. 6
judge—death of — before completion of trial of suit— Or. 18, r. 14
next-friend—death of—stay of proceedings on— Or. 32, r. 10 (1)
DEBT—
attachment—mode of—of debt— Or. 21, r. 44
——liability of debt to— S. 52 (1)
delivery of—in execution— Or. 21, r. 76
deposit by defendant in Court in suit to recover debt— Or. 24, r. 1
DECREE—*See* Preliminary decree: Final decree: Decree *ex parte*.
accounts,—in suits for— Or. 20, r. 16
adjustment of,— Or. 21, r. 2
administration suit—decree in— Or. 20, r. 13
amendment of,— S. 116
appeal from original decree— S. 76
assignment of,—by decree-holder— Or. 21, r. 14
*See* Transfer of Decree.
award—decree based on— Or. 39, r. 16
certified copies of,—furnishing— Or. 20, r. 20; Or. 40, r. 35
compromise—decree in terms of— Or. 23, r. 3
consent decree— S. 76 (3); Or. 23, r. 3
contents and date of original decree— Or. 20, rr. 6, 7
——appellate decree— Or. 40, r. 34
Courts by which decrees may be executed— S. 35
cross-decrees-execution in case of— Or. 21, r. 16

DECREE.—(*Concld.*)

decree to agree with judgment— Or. 20, r. 6 (1)

default—decree against plaintiff by—bars fresh suit— Or. 9, r. 9

definition of decree— S. 2

Government—decree in suit for partition of estate paying revenue to— S. 46

instalments—decree may direct payment by— Or. 20, r. 11

irregularity—decree not to be interfered with in appeal for mere— S. 78

joint-decree—and application for execution— Or. 21, r. 13

judgment—decree on— S. 30

——decree to agree with— Or. 20, r. 6 (1)

legal representative—decree against— S. 45

mode of paying money under decree— Or. 21, r. 1

order of dismissal for default is not a decree— S. 2

order rejecting plaint is a decree— S. 2

partition—decree in suit for— Or. 20, r. 18

——of estate paying revenue to Government— S. 46

partnership—in suit for dissolution of— Or. 20, r. 15

preliminary decree—definition of— S. 2

reference to High Court—decree not to be executed pending— Or. 44, r. 2

second appeal—from appellate decree— S. 79

set off—decree in suit where—is allowed— Or. 20, r. 19

stay of execution of,— Or. 21, r. 24
Or. 40, r. 5,
Or. 44, r. 2

DECREE.—(*Concld.*)

transfer of decree for execution—*See* Transfer of decree.

transferee of decree—application for execution by— Or. 21, r. 15

DECREE EX PARTE— Or. 9, rr. 6, 13

appeal from— S. 76

notice to opposite party—no decree to be set aside without— Or. 9, r. 14

second appeal from appellate decree passed *ex parte* S. 79 (2)

DECREE-HOLDER—

assignment of decree by,—and execution— Or. 21, r. 14

bid or buy property—not to—without leave of Court— Or. 21, r. 69

definition of,— S. 2

dispossession by— Or. 21, r. 97

execution—application for—by,— Or. 21, r. 18

——joint decree-holder— Or. 21, r. 13

——in case of assignment of decree by,— Or. 21, r. 14

notice to,—why payment or adjustment should not be certified— Or. 21, r. 2

payment out of Court to— Or. 21, r. 2

purchase by decree-holder at court-sale— Or. 21, r. 69

rateable distribution among decree-holders— S. 59

stay of execution pending suit by judgment-debtor against— Or. 21, r. 27

DEFAULT—

dismissal of suit for,— Or. 9, rr. 8-9

——of suit for default—not a decree— S. 2

——of suit where neither party appears— Or. 9, r. 3

DEFAULT.—(*Concld.*)

execution—default in proceeding with—after attachment— Or. 21, r. 55

purchase money—default in payment of—in time— Or. 21, r. 83

re-sale on default of deposit by purchaser— Or. 21, r. 81

wilful default—particulars of—to be stated in pleadings— Or. 6, r. 4

DEFECT OR ERROR—

amend—general power of Court to—defect in proceedings— S. 117

appeal—defect in an order may be a ground of objection in— S. 83

——defect in a proceeding not always a ground for reversing decree in— S. 78

second appeal—defect in proceedure when a ground of— S. 79

withdrawal of suit—leave for—because of formal defect— Or. 23, r. 1

DEFENCE—

distinct grounds of—to be stated separately— Or. 8, r. 7

facts to be specially pleaded in— Or. 8, r. 2

Government—defence of suit against public officer undertaken by— Or. 27, r. 8

new ground of—how raised— Or. 8, r. 8

DEFENDANT—

acquiescence in suit by defendant residing outside jurisdiction— S. 19 (*b*)

addition of parties as defendants and limitation— Or. 1, r. 10

adjourned hearing—procedure at—when defendant assigns good cause for previous non-appearance— Or. 9, r. 7

DEFENDANT.—(*Contd.*)

appearance by one defendant for others— Or. 1, r. 12

causes of action—joinder of—and of defendants— Or. 2, r. 3

common interest—defendant may be sued on behalf of all having— Or. 1, r. 8

contract—joinder of defendants liable on same— Or. 1, r. 6

damages—defendant need not plead to— Or. 8, r. 3

day of appearance of—how fixed in summons— Or. 5, r. 6

defend on behalf of all—when one defendant may— Or. 1, r. 8

documents relied on by,—and order in summons to produce— Or. 5, r. 7

hearing—procedure where defendant only appears at— Or. 9, r. 8

issue—where one of several defendants not at—with plaintiff— Or. 15, r. 2

joinder of defendants— Or. 1, r. 3; Or. 1, r. 6

joint defendants—Court may give judgment against one or more of— Or. 1, r. 4 (*b*)

jurisdiction—leave of Court to sue where all defendants not within— S. 19

liability of—plaint must disclose— Or. 7, r. 5

marriage of female defendant—no abatement of suit by— Or. 22, r. 7

negotiable instrument—joinder of defendant liable on same— Or. 1, r. 6

newly added defendant—service of summons and plaint on— Or. 1, r. 10 (4)

non-appearance of,—and *ex parte* decree— Or. 9, r. 6

DEFENDANT.—(*Concld.*)

non-attendance of one of several defendants— Or. 9, r. 11; Or. 9, r. 12

non-joinder of—objection as to—when to be taken— Or. 1, r. 13

personal appearance of—when can be ordered— Or. 5, rr. 3, 4

place of suing—and residence of defendant— Or. 20

plaint—defendant's name, description and residence to be put in— Or. 7, r. 1 (*c*)

pleader—defendant may appear by— Or. 5, r. 1 (2)

reliefs claimed—defendant need not be interested in all— Or. 1, r. 5

right to begin—when defendant has— Or. 18, r. 1

security for production of property—defendant giving— Or. 36, r. 5

——for appearance— S. 74 (*a*); Or. 36, r. 1; Or. 36, r. 2

service of summons to be on defendant in person or his agent— Or. 5, r. 12

summons not issued if claim admitted by,—when plaint presented— Or. 5, r. 1

written statement—when to be filed— Or. 8, r. 1

DEFINITION OF—

Code— S. 2 (1)

Court which passed a decree— S. 34

decree— S. 2 (2)

decree-holder— S. 2 (3)

district— S. 2 (4)

foreign Court— S. 2 (5)

foreign judgment— S. 2 (6)

Government pleader— S. 2 (7)

DEFINITION OF.—(*Concld.*)

judge— S. 2 (8)

judgment— S. 2 (9)

judgment-debtor— S. 2 (10)

legal representative— S. 2 (11)

mesne profit— S. 2 (12)

order— S. 2 (13)

pauper— Or. 33, r. 1 Expln.

pleader— S. 2 (14)

prescribed— S. 2 (15)

public officer— S. 2 (16)

rules— S. 2 (17)

share in a corporation— S. 2 (18)

signed— S. 2 (19)

DEMEANOUR—

of witness—remarks on— Or. 18, r. 11

DEPARTURE—

in pleadings— Or. 6, r. 7

DEPOSIT—

Court—deposit in—by defendant in suit for money or for damages— Or. 24, r. 1

money or moveables—of—in Court— Or. 37, r. 10

DETENTION—

*See* Arrest and Detention.

DEWAN—

may institute suit relating to public nuisance— S. 71

——public charities— S. 72

DISABILITY—PERSONS UNDER—

consent to orders on behalf of— S. 111

DISCHARGE—

decree—discharge of—and execution proceedings— S. 40

injunction — discharge of order for— Or. 37, r. 4

DISCOVERY—

*See* Affidavit of documents—Interrogatories—Inspection.

DISCOVERY.—(*Concld.*)
documents—discovery of—Or. 11, rr. 12-19
interrogatories—discovery by—Or. 11, rr. 1-11
non-compliance with order for discovery—Or. 11, r. 21
power of Court to order discovery—S. 27 (*a*)
premature discovery—Or. 11, r. 20
specific documents—power of Court to order discovery of—Or. 11, r. 19 (3)

DISMISSAL OF APPEAL—
cross-objections—effect of dismissal of appeal on—Or. 40, r. 21 (4)
hearing regular—for appellant's default at—Or. 40, r. 16 (1)
notice—for non-service of—because of failure to deposit costs—Or. 40, r. 17
re-admission of appeal dismissed—Or. 40, r. 18

DISMISSAL OF SUIT—
*See* Default—Dismissal of appeal.
attachment before judgment to be withdrawn when suit dismissed—Or. 36, r. 9
party—where neither—appears—Or. 9, r. 3
pauper—dismissal of suit brought by—and Court-fees—Or. 33, r. 11
plaintiff—dismissal of suit for non-appearance of—Or. 9, r. 8
restoration of suit dismissed for non-appearance of both parties—Or. 9, r. 4
——plaintiff's default—Or. 9, r. 9
security for costs,—for failure to furnish—Or. 25, r. 2
suit,—when a bar to fresh—Or. 9, r. 9
——when not a bar to—fresh—Or. 9, rr. 4, 5

DISPOSSESSION—
decree-holder,—by—Or. 21, r. 97

DISTRIBUTION OF ASSETS—
*See* Rateable distribution.

DISTRICT—
definition of—S. 2 (4)

DISTRICT COURT—
definition of—S. 2
power of—to transfer and withdraw suits and proceedings—S. 23

DOCUMENTS—
affidavit of documents—Or. 11, r. 13
business books—giving copies of entries in—in lieu of inspection—Or. 11, r. 19
costs—of notice for admission or production of unnecessary—Or. 12, r. 9
endorsement on—admitted in evidence—Or. 13, r. 4
examination of—before framing issues—Or. 14, r. 4
execution of—mode of execution of decree for—Or. 21, r. 32
hearing—documentary—evidence to be produced at first—Or. 13, rr. 1, 2
impounding of—Or. 13, r. 8; S. 27 (*a*)
inspection of—Or. 11, r. 18 (2)
——power of Court to order—S. 27 (*a*); Or. 11, rr. 11-21
issues—examination of documents before framing—Or. 14, r. 4
letter-book, shop-book or account book, copies of entries in—Or. 13, r. 5 (1)
list of—relied on—Or. 7, r. 14 (2)
notice to admit—Or. 12, rr. 2-3
——produce—Or. 12, r. 8
pleadings—effect of documents to be stated in—Or. 6, r. 9

DOCUMENTS.—(*Concld.*)

power of Court to inspect documents when privilege claimed— Or. 11, r. 19 (2)

——to order production of documents before it— Or. 11, r. 14

——to send for papers from its own records, etc.,— Or. 13, r. 10

production of—on which plaintiff sues— Or. 7, r. 14

——referred to in pleadings— Or. 11, r. 15

public record—receiving copies of entries in— Or. 13, r. 5 (2)

receiver—power of—to execute document— Or. 38, r. 1 (*d*)

recording of documents admitted in evidence— Or. 13, r 7 (1)

registration of documents by Judge or officer of Court— Or. 21, r. 32 (6)

rejection of irrelevant or inadmissible documents— Or. 13, r. 3

relied on by defendant—and order in summons to produce— Or. 5, r. 7

——plaintiff—but not in his possession... Or. 7, r. 15

return of admitted documents— Or. 13, r. 9

——rejected documents— Or. 13, r. 7 (2)

——power of Court to order return of documents— S. 27 (*a*)

summons to attend and to produce— Or. 16, r. 1

——to produce— Or. 16, r. 6

witness apprehended cannot produce,—procedure where— Or. 16, r. 18

DOOR—

arrest—breaking open of outer door for— S. 47, 2nd proviso

breaking open of—for delivery of possession—to decree-holder— Or. 21, r. 33

DOOR.—(*Concld.*)

moveable property—breaking open of outer door for seizure of— S. 54

proclamation—affixing copy of—on outer door of house of witness— Or. 16, r. 10 (2)

summons—affixing copy of—on door of defendant's house— Or. 5, r. 17

DWELLING HOUSE—

arrest—entry by serving officer into dwelling house for— S. 47

property—entry by serving officer into dwelling house for seizing— S. 54

ERROR—*See* Defect or error.

EVIDENCE—

additional—in appeal— Or. 40, rr. 26-28

adjourned hearing—failure to produce evidence at— Or. 17, r. 3

appealable cases—how,—taken in— Or. 18, r. 5

attachment—evidence in support of claim or objection made to— Or. 21, r. 57

commission,—on— Or. 26, rr. 1-8
*See* Commission.

demeanour of witnesses—remarks on— Or. 18, r. 11

documentary evidence—production of— Or. 13, rr. 1, 2

hearing—production of evidence at— Or. 18, r. 2

——failure to produce evidence at adjourned— Or. 17, r. 3

——failure to produce evidence at first— Or. 15, r. 4

interpreted—when to be— Or. 18, r. 6

interrogatories—answers to—may be used as evidence— Or. 11, r. 22

issues—production of evidence where there are several— Or. 18, r. 3

EVIDENCE.—(*Concld.*)

judge—power to deal with evidence taken before another— Or. 18, r. 14

——when unable to make memorandum of,—to record reasons— Or. 18, r. 13

lower Court to return evidence to appellate Court with findings— Or. 40, r. 24

particular question and answer may be taken down— Or. 18, r. 10

pleading to state facts and not evidence— Or. 6, r. 2

production of documentary evidence— Or. 13, rr. 1, 2

questions objected to and allowed by Court— Or. 18, r. 10

refusal of party to suit to give evidence when required by Court— Or. 16, r. 20

review on discovery of new and important evidence— Or. 45, r. 1

summons to give evidence— Or. 16, r. 1

EXAMINATION—*See* Evidence: Witness.

commission—examination Or. 26, rr. 1-8

corporation—examination of officer of—as to its property— Or. 21, r. 39

executing officer—examination of—as to his inability to execute process— Or. 21, r. 23

issues—examination of parties in order to frame— Or. 14, r. 1

——of witness before framing Or. 14, r. 4

judgment-debtor — examination of—as to his property— Or. 21, r. 39

parties—examination of—by Court—at first hearing— Or. 10

pauper — examination of applicant for leave to sue as— Or. 33, r. 4

EXAMINATION.—(*Concld.*)

proclamation for sale—for settling— Or. 21, r. 64

serving officer—examination of—touching service of summons— Or. 5, r. 19

——examination of—when witness fails to attend— Or. 16, r. 10 (1)

witnesses—examination of— Or. 18, rr. 4-12

——before commissioner — Or. 26, r. 17 (1)

EXECUTION OF DECREE—

*See* Arrest—Attachment—Sale—Execution proceedings.

benami purchases at execution sales— S. 58

claims—investigation of—*See* Attachment.

co-partners—execution in suits between— Or. 30, r. 9

Courts by which decrees may be executed— S. 35

Court when it ceases to have jurisdiction to execute its decree— S. 34 (*b*)

exercise of powers in appeal from orders made in— Or. 40, r. 8

firm—execution of decree against— Or. 21, r. 48

foreign decrees—execution of— Ss. 38-A, 67-A, 67-B

orders—execution of— S. 33

partner—execution of decree against— Or. 21, r. 47

property attached in execution of decrees of several Courts— S. 55

——liable to attachment and sale— S. 52

public officer—execution of decree against— S. 67

reference to High Court—no execution of decree pending— Or. 44, r. 2

EXECUTION OF DECREE.—(*Contd.*)

resistence to execution— S. 60

stay of,—on appeal— Or. 40, r. 5

surety for restitution of property taken in execution— S. 109

vesting of property sold in execution in purchaser— S. 57

(1) **Application for execution—**

amendment of— Or. 21, r. 15

contents of application for execution— Or. 21, r. 9 (2)

cross-claims—*See* Cross-claims.

cross-decrees—*See* Cross-decrees.

decree-holder—application by—for execution— Or. 21, r. 8

immediate execution—oral application for—of money-decree— Or. 21, r. 9 (1)

joint decree-holder—application by— Or. 21, r. 13

legal representative of party to the decree,—against— Or. 21, r. 20 (1) (*b*)

mortgage suits—cross-decrees and cross-claims in— Or. 21, r. 18

moveable property not in judgment-debtor's possession,—as to— Or. 21, r. 10

notice to legal representative of a party to the decree— Or. 21, r. 20

——when decree more than a year old— Or. 21, r. 20

particulars in application for attachment of immovable property— Or. 21, r. 11

precept—issue of—for attachment— S. 39

procedure on receiving application for execution— Or. 21, r. 15

process for execution— Or. 21, r. 22

rejection of application for execution— Or. 21, r. 15 (1)

EXECUTION OF DECREE.—(*Contd.*)

share of judgment-debtor in property to be specified in application— Or. 21, r. 11 (*b*)

simultaneous execution against person and property— Or. 21, r. 19

transferee of decree—application by— Or. 21, r. 14

——to hold subject to equities of judgment-debtor— S. 42

value of property attached—under a money-decree— Or. 21, r. 15 proviso.

(2) **Courts executing decrees, their powers and functions—**

Courts by which decrees may be executed— S. 35

documents to be sent to Court to which decree transferred— Or. 21, r. 6

execution by Court to which decree is sent for execution— Or. 21, r. 8

jurisdiction when lands situate in more than one— Or. 21, r. 3

procedure where Court desires execution by another Court— Or. 21, r. 6

questions as to execution to be determined by executing Court— S. 40

transfer for execution—mode of— Or. 21, r. 5

transferred decree—powers of Court executing— S. 38

(3) **Limit of time for execution—**

fraud—where execution of decree is prevented by— S. 41 (2)

injunction—execution of decree granting—and limitation— S. 41 (1)

(4) **Mode of execution—**

building or enclosure—for delivery of possession of— Or. 21, r. 33 (3)

EXECUTION OF DECREE.—(*Contd.*)

corporation—against— Or. 21, r. 30 (2)
documents—for execution of— Or. 21, r. 32
immoveable property—for delivery of— Or. 21, r. 33
——for joint possession of— Or. 21, r. 33 (2)
injunction—for— Or. 21, r. 30
joint possession of immoveable property—for— Or. 21, r. 33 (2)
money—for payment of— Or. 21, r. 28
negotiable instrument—for endorsement of— Or. 21, r. 32
partner—against— Or. 21, r. 47
partnership firm—against— Or. 21, r. 48
restitution of conjugal rights—for— Or. 21, r. 30
,, r. 31
specific moveable property —for— Or. 21, r. 29
specific performance—for— Or. 21, r. 30

**(5) Procedure in execution—**

Government—for partition of an undivided estate paying revenue to— S. 46
legal representative—enforcement of decree obtained against— S. 45
powers of Court to enforce execution— S. 44

**(6) Questions relating to execution—**

discharge of decree—questions relating to— S. 40 (1)
execution of decree, questions relating to— S. 40 (1)
"parties to the suit" meaning of— S. 40, Expln.
representative of party—inquiry as who is— S. 40 (3)
satisfaction of decree—question relating to— S. 40 (1)

EXECUTION OF DECREE.—(*Concld.*)

**(7) Transferees and legal representatives—**

accounts—power to compel legal representative to produce— S. 43 (2)
execution against legal representative of deceased judgment-debtor— S. 43
transferee of decree to hold subject to equities of judgment-debtor— S. 42

**Arrest of judgment-debtor—** *See* Arrest and detention.
**Attachment of property—** *See* Attachment.
**Delivery of possession and resistance thereto—***See* Possession.
**Investigation of claims—** *See* Attachment.
**Sale in execution—***See* Sale.
**Stay of execution—***See* Stay.

EXECUTION PROCEEDINGS—

abatement—rules as to—how far apply to— Or. 22, r. 12
legal representative—execution against— Ss. 43, 45
striking off—effect of— Or. 21, r. 55
transfer of— S. 23
withdrawal of— S. 23

EXECUTION PURCHASER—

*See* Auction purchaser.

EXECUTOR AND ADMINISTRATOR—

beneficiaries—representation of—in suits as to property vested in trustees, etc.,— Or. 31, r. 1
joinder of claims in suit—by or against— Or. 2, r. 5
——of executors, etc.,—in suits concerning property vested in them— Or. 31, r. 2
married executrix—husband of—need not be joined as party— Or. 31, r. 3

EXEMPTION—
appearance—pardanashin women exempt from personal— S. 97
——persons of rank—exempt from personal— S. 98
——public officer—exempt from personal— S. 66
commission to examine exempted persons— Or. 26, r. 1 S. 98 (3)
from arrest— S. 100 (3)
——of judicial officer—parties—pleaders and witnesses— S. 100
—of persons serving in or with His Majesty's Army— S. 99-A
——of public officer—except in execution of decree— S. 66
——of women in execution of money-decrees— Ss. 48, 97

EXHIBITS—
appeal—furnishing copies of,—in— Or. 40, r. 12 (3)
endorsement on— Or. 13, r. 4
return of— Or. 13, r. 9

EX PARTE—
*See* Decree *ex parte*.
appeal—hearing of— Or. 40, r. 16
——re-hearing of appeal—disposed of *ex parte*— Or. 40, r. 20
commissioner—when may proceed *ex parte*— Or. 26, r. 18 (2)
suit—hearing of— Or. 9, r. 6

EXPENSES—
witnesses—of— Or. 16, r. 2

EXPERT WITNESSES—
fee payable to— Or. 16, r. 2 (2)

FACTS—
burden of proof—and right to begin— Or. 18, r. 3

FACTS.—(*Concld.*)
illegality—showing—must be specially pleaded in defence— Or. 8, r. 2
inconsistent allegations of—to be raised only by way of amendment— Or. 6, r. 7
issues—questions of fact may by agreement be stated in form of— Or. 14, r. 6
issues of fact—what are— Or. 14, r. 1 (4)
not denied—to be taken as admitted— Or. 8, r. 5
notice to admit facts— Or. 12, rr. 4, 5
pleadings to state material facts only— Or. 6, r. 2
presumed by law need not be alleged in pleadings— Or. 6, r. 13
specially pleaded—what facts to be— Or. 8, r. 2

FEMALE—
decree against wife when may be executed against husband— Or. 22, r. 7 (2)
marriage of female party—suit not to abate by— Or. 22, r. 7

FINAL DECREE—
administration suit—in— Or. 20, r. 13
agent—in suits between principal and— Or. 20, r. 16
appeal from—where no appeal preferred from preliminary decree— S. 77
definition of— S. 2 (2) Expln.
mesne profits—in respect of— Or. 20, r. 12 (2)
partnership suit—in— Or. 20, r. 15
rent—in respect of— Or. 20, r. 12 (2)

FINE—
witness—imposing of fine on defaulting— Or. 16, r. 12

FIRM—*See* Partners.
execution of decree against firm— Or. 21, r. 48

FIRM.—(*Concld.*)

partners may sue or be sued in firm name— Or. 30, r. 1

proceedings to continue in firm name— Or. 30, r. 6

service of summons where partners sued in firm name— Or. 30, r. 3

signature and verification of pleadings— Or. 30, r. 1 (2)

suit against person carrying on business in name other than his own— Or. 30, r. 10

——between a firm—and one or more of its partners— Or. 30, r. 9

——two firms having one or more partners in common— Or. 30, r. 9

——by or against— Or. 30

FOREIGN COURT— *See* Foreign judgment.

definition of— S. 2 (5)

execution of decrees passed by Courts in British India and Indian States— S. 38-A

pendency of suit in—no bar to suit in Travancore Court— S. 9, Expln.

presumption as to jurisdiction of— S. 13

FOREIGN JUDGMENT— *See* Foreign Court,

definition of— S. 2 (6)

merits of the case—where foreign judgment not given on— S. 12 (*b*)

Travancore—when no bar to suits in— S. 12

FOREIGN SUMMONS—

service of— S. 26

FORMS IN GENERAL—

pleadings— App. A

process— App. B

FORMS IN GENERAL.—(*Concld.*)

discovery, inspection and admission— App. C

decrees— App. D

execution— App. E

supplemental proceedings— App. F

arbitration— App. G

appeal, reference and review— App. H

miscellaneous forms,— App. I

use of,—in Appendices—to Schedule I of the Code— Or. 46, r. 3

FORMS OF PLAINTS—Appendix A—P. 960

Adminstration suits— 980-982

Against surety for payment of rent— 965

Against a builder for defective workmanship— 968

Against a fraudulent purchaser— 976

Breach of agreement to purchase land— 966

Breach of contract to serve— 967

By tenant against landlord, with special damage— 969

Carrying on a noxious manufacture— 971

Deficiency upon a re-sale (goods sold at auction)— 963

Diverting a water course— 973

Execution of trusts— 983

Foreclosure or sale— 983

Fraudulently procuring credit— 970

Goods sold and delivered— 962

Goods made at defendant's request, and not accepted— 962

Injunction— 977-978

Injuries caused by negligence on a rail-road— 974

Injuries caused by negligent driving—974

Interpleader— 980

Malicious prosecution— 975

Money lent— 961

Money overpaid— 961

Movables wrongfully detained— 975

Not delivering goods sold— 966

FORMS OF PLAINTS.—(*Concld.*)
Obstructing a highway— 972
Obstructing right of way— 972
Obstructing right to use water for irrigation— 973
On an award— 965
On a foreign judgment— 965
On a bond for the fidelity of a clerk—968
On an agreement of indemnity— 969
Partnership— 986
Polluting the water under the plaintiff's land— 971
Procuring property by fraud— 970
Public nuisance— 978
Redemption— 984
Rescission of a contract on the ground of mistake— 977
Restoration of movable property threatened with destruction and injunction— 979
Services or materials at a reasonable rate— 963-964
Specific performance— 985
Use and occupation— 964
Wrongful dismissal— 967

FORMS OF DECREES—Appendix D.
Decree for injunction— 1011-1012
——for rectification of instrument—1011
——for recovery of land and mesne profits— 1018
——for sale of hypothecated property— 1010
——in original suit— 1009
——to set aside a transfer in fraud of creditors— 1011
Final decree in an administration suit by a legatee— 1014, 1016
——in a suit for dissolution of partnership and partnership accounts— 1017
Preliminary decrees in an administration suit— 1012, 1015
——in a suit for dissolution of partnership and partnership accounts— 1016
Simple money decree— 1010

FORMS OF WRITTEN STATEMENTS—Appendix A.
General defences—
Denial— 986
Estoppel— 987
Ground of defence subsequent— 988
Insolvency— 987
Jurisdiction— 987
Limitation— 987
Minority— 987
Payment into Court— 987
Performance remitted— 987
Protest— 987
Rescission— 987
*Res judicata*— 987

Defences in suits on or for—
Administration by pecuniary legatee— 992
Bonds— 988
Debt— 989
Detention of goods— 990
Guarantees— 988
Goods sold and delivered— 988
Infringement of copyright— 990
Infringement of trade mark— 990
Injuries caused by negligent driving— 989
Nuisance— 990
Particulars— 993
Probate of will— 993
Redemption— 991
Sale— 991
Specific performance— 992
Trade mark— 1013
Wrongs— 989

FORMS OF PROCESS—Appendix B.
Affidavit of process-server— 998-999
Notice to defendant— 1000
Notice to person proposed to be added as co-plaintiff— 996
Order for transmission of summons for service to another Court— 997
Order for transmission of summons to be served on a prisoner— 997
Order for transmission of summons on public servant or soldier— 997

FORMS OF PROCESS.—(*Concld.*)

Proclamation requiring attendance of witness— 1001
Summons for disposal of suit— 994
Summons for settlement of issues— 995
Summons to appear in person— 995
Summons to legal representative of a deceased defendant— 996
——witness— 1000
To accompany return of summons to another Court— 998
Warrant of arrest of witness— 1002
Warrant of attachment of property of witness— 1002
Warrant of committal— 1003

FORMS OF DISCOVERY, INSPECTION AND ADMISSION—Appendix C.

Admission of fact pursuant to notice— 1008
Affidavit as to documents— 1005
Answer to interrogatories— 1004
Interrogatories— 1004
Notice to admit documents— 1007
Notice to admit facts— 1007
Notice to inspect documents— 1006
Notice to produce documents— 1006
Notice to produce (general form)— 1008
Order for affidavit as to documents—1005
Order for delivery of interrogatories— 1004
Order to procure documents for inspection— 1006

FORMS RELATING TO EXECUTION—Appendix E.

Application for execution of decree—1021
Attachment in execution— 1026
Attachment in execution—prohibitory orders— 1026-1029
Certificate of non-satisfaction of decree— 1020, 1035
Certificate of execution of decree transferred to another Court— 1020
Certificate authorizing judgment-debtor to mortgage, etc., property— 1036
Certificate of sale of land— 1038

FORMS RELATING TO EXECUTION.—(*Contd.*)

Notice as to why payment or adjustment should not be recorded— 1019
Notice to show cause why execution should not issue— 1022
Notice to state objections to draft of document— 1023
Notice to show cause why warrant of arrest should not issue— 1024
Notice of attachment of decree to the Court which passed it— 1029
Notice of attachment of decree to the holder of decree— 1029
Notice to attaching creditor— 1031
Notice of the day fixed for settling a sale proclamation— 1032
Notice to person in possession of property sold in execution — 1035
Notice to show cause why sale should not be set aside— 1037
Order sending decree for execution to another Court— 1019
Order for the release of a person imprisoned in execution of decree— 1026
Order to attach salary of public officer or servant of local authority— 1028
Order of attachment of negotiable instrument— 1028
Order for payment to the plaintiff, etc., of money, etc., in the hands of a third party— 1030
Order on the nazir for causing service of proclamation of sale— 1034

FORMS RELATING TO EXECUTION.—(Concld.)
Order for delivery to certified purchaser of land in execution— 1038
Precept for attachment— 1019
Proclamation of sale— 1032-1034
Prohibitory order against payment of debts— 1035, 1036
Summons to answer charge of obstructing execution of decree— 1038
Warrant of attachment of moveable property under a money-decree— 1022
Warrant for seizure of specific movable property adjudged by decree— 1023
Warrant to the Amin to give possession of land, etc.,— 1024
Warrant of arrest in execution— 1025
Warrant of committal of judgment-debtor to jail— 1025
Warrant of sale of property in execution of a decree for money— 1031
Warrant of committal— 1039

FORMS OF SUPPLEMENTAL PROCEEDINGS—Appendix F.
Appointment of a receiver— 1044
Attachment before judgment, with order to call for security for fulfilment of decree— 1041
Attachment before judgment on proof of failure to furnish security— 1042
Bond to be given by receiver— 1045
Order for committal— 1041
Security for appearance of a defendant arrested before judgment— 1040
Security for the production of property— 1042
Summons to defendants to appear on surety's application for discharge— 1040
Temporary injunctions— 1043

FORMS OF SUPPLEMENTAL PROCEEDINGS.—(Concld.)
Warrant of arrest before judgment— 1039

FORMS—ARBITRATION—Appendix G.
Application for order of reference— 1046
Order of appointment of new arbitrator— 1047
Order of reference— 1046
Special case— 1047

FORMS OF APPEAL, REFERENCE AND REVIEW—Appendix H.
Application to appeal *in forma pauperis*— 1051
Decree in appeal— 1052
Intimation to lower Court of admission of appeal— 1050
Memorandum of appeal— 1048
——of cross-objection— 1051
Notice to respondent of day fixed for hearing of the appeal— 1050
Notice to a party to a suit joined by the Court— 1051
Notice of appeal *in forma pauperis*— 1053
Notice to show cause why a review should not be granted— 1053
Security bond to be given during the pendency of appeal— 1049
Security bond to be given on order to stay execution of decree— 1048
Security for costs of appeal— 1049

FORMS, MISCELLANEOUS—Appendix I.
Agreement of parties as to issues to be tried— 1053
Commission to examine absent witness— 1056
——for a local investigation or to examine accounts— 1057
——to make a partition— 1058
Letter of request— 1056

FORMS, MISCELLANEOUS.—(*Concld.*)
List of documents produced by plaintiff or defendant— 1055
Notice of application for transfer of suit to another Court— 1054
Notice of payment into Court— 1054
Notice to show cause—(General form)— 1055
Notice to parties as to examination of witness leaving the jurisdiction— 1055
Notice to minor defendant and guardian— 1058
Notice to opposite party of day fixed for hearing evidence of pauperism— 1059
Notice to surety of his liability under a decree— 1059
Register of civil suits— 1060
Register of appeals— 1060

FRAME OF SUIT— Or. 2

FRAUD—
defence—fraud must be specifically pleaded in— Or. 8, r. 2
execution of decree when prevented by fraud, and limitation— S. 41
foreign judgment obtained by fraud— S. 12 (*e*)
particulars of—to be stated in pleadings— Or. 6, r. 4
pauper—fraudulent disposal of property by and applying to sue *in forma pauperis*— Or. 33, r. 5 (*c*)
sale—fraud in publishing or conducting— Or. 21, r. 87

GOVERNMENT—
appearance—fixing of day and extension of time for— Or. 27, r. 5
attendance of person able to answer questions in suits against— Or. 27, r. 6
execution of decree against— S. 67

GOVERNMENT.—(*Concld.*)
notice before institution of suit against— S. 65
pauper suits—court-fees in—and— Or. 33, r. 10
——right of—to apply for payment of court-fees in— Or. 33, r. 12
persons authorised to act for— Or. 27, r. 2
process—agent for Government to receive— Or. 27, r. 4
public officer—where Government undertakes defence of suit against— Or. 27, r. 8
rateable distribution of assets—and rights of— S. 59 (3)
signature and verification of plaint and pleadings— Or. 27, r. 1
suit by or against—to be instituted by or against Dewan of Travancore— S. 64
time—extension of—to enable public officer to make reference to— Or. 27, r. 7
title of suits by or against— Or. 27, r. 3

GOVERNMENT PLEADER—
Definition of— S. 2 (7)
dispaupering of plaintiff—on application by— Or. 33, r. 9
notice to—of day for hearing of application for leave to sue as pauper— Or. 33, r. 6
suits against Government—and— Or. 27, r. 4

GOVERNMENT REVENUE—
decree in suit for partition of immovable property paying— Or. 20, r. 18 (1)
dispossessing holder for default in payment of— Or. 37, r. 9

GRATUITIES TO GOVERNMENT PENSIONERS—
exempt from attachment— S. 52 (1) (*g*)

GROUNDS OF OBJECTION IN APPEAL—
memorandum of appeal,—
to be stated in— Or. 40, r. 1 (2)
——where not stated in— Or. 40, r. 2

GUARDIAN AD LITEM—*See* Minor : Next friend.
affidavit in support of application for appointment of— Or. 32, r. 3 (3)
appointment of— Or. 32, r. 3
consent—no person to be appointed guardian without his— Or. 32, r. 4 (3)
costs incurred by officer of Court as— Or. 32, r. 4 (4)
death of— Or. 32, r. 11
leave of Court for compromise of suit by— Or. 32, r. 7
——to receive money or moveable on behalf of minor— Or. 32, r. 6
minor—defendant—where not represented by— Or. 32, r. 5
notice of application for appointment of—to whom to be given— Or. 32, r. 3 (4)
officer of Court as— Or. 32, r. 4 (4)
removal of— Or. 32, r. 11
representation of minor by— Or. 32, r. 5
retirement of— Or. 32, r. 11
security — guardian *ad litem* required to give— Or. 32, r. 6
who may be appointed— Or. 32, r. 4

HEARING—*See* Evidence : Issues.
adjourn hearing—when Court may— Or. 17, r. 1
adjourned hearing — procedure where parties fail to appear at— Or. 17, r. 2
appeal—hearing—of— Or. 40, rr. 15-28
disposal of special case—and— Or. 35, r. 5
——suit at first hearing— Or. 15
evidence—failure to produce — at adjourned hearing— Or. 17, r. 3
——at first— Or. 15, r. 4

HEARING,—(*Concld.*)
interpleader suits—procedure at first hearing in— Or. 34, r. 4
pauper—procedure at hearing of application for leave to sue as— Or. 33, r. 7
restoration of appeal heard *ex parte*— Or. 40, r. 20
suit—hearing of— Or. 18
——to be continued from day to day— Or. 17, r. 1

HEIR—
joinder of claims in suits by or against heirs— Or. 2, r. 5

HUNDIS—*See* Bill of exchange : Negotiable instrument.

HUSBAND—
execution against—of decree passed against wife— Or. 22, r. 7
of married executrix, etc., need not join in suit by or against her— Or. 31, r. 3

IMMOVABLE PROPERTY—
attachment—liable to— S. 52 (1)
——of,— Or. 21, r. 52
commission to make partition of— Or. 26, r. 13
dispossession of—by purchaser in execution— Or. 21, r. 97
distribution of assets on sale of immovable property— S. 59 (1)
execution of decree for delivery of building or enclosure— Or. 21, r. 33
——of—in possession of tenant— Or. 21, r. 34
jurisdiction—execution of decree where lands lie in more than one— Or. 21, r. 3
——in suits relating to immovable property— S. 15
—situate in different—suit for immovable property— S. 16

IMMOVABLE PROPERTY,—(*Concld.*)
non-appealable cases—immovable property not to be attached in— Or, 16, r. 10
particulars to be specified in application for attachment of— Or. 21, r. 11
partition of—decree in suit for— Or. 20, r. 18
——estate or separate possession of a share—suit for— S. 46
plaint in suit for recovery of— Or. 7, r. 3
recovery of—decree for— Or. 20, r. 9
sale of—in execution— Or. 21, rr. 79-93
——and purchaser's title— S. 57
service of summons on agent in charge—in suits for— Or. 5, r. 14
stay of sale of—pending appeal— Or. 40, r. 6 (2)
suits for immovable property—and jurisdiction— S. 15
——partition of estate or for separate possession of a share— S. 46
——relating to immovable property situated in different jurisdictions— S. 16

IMPOUNDING—
documents—of— Or. 13, r. 8

IMPRISONMENT—
*See* Arrest and Detention.

INDIAN PRINCE OR STATE—
in alliance with His Majesty the King-Emperor—suits by or against— Ss. 66-A, 66-B
——execution of decrees passed in Courts of— Ss. 38-A, 67-A

INFANT—*See* Minor.

INHERENT POWERS—
of Courts— S. 115

INJUNCTION—
compensation—where injunction wrongfully obtained— S. 75
corporation—against—how may be enforced— Or. 21, r. 30 (2)
Or. 37, r. 5
disobedience of decree for— Or. 21, r. 30 (5)
execution of decree granting— S. 41 (1)
limitation—and execution of decree granting— S. 41 (1)
public nuisance—in suits respecting— S. 71
special provisions for enforcing decree for— Or. 21, r. 30 (5)

**Temporary injunction—**
contract—to restrain party from committing breach of— Or. 37, r. 2
corporation—injunction to —binding on its officers— Or. 37, r. 5
disobedience of order granting injunction— Or. 37, r. 2 (3)
granted—when— Or. 37, r. 1
injury—to restrain party from committing— Or. 37, r. 2
notice to opposite party before granting injunction— Or. 37, r. 3
order for—may be discharged, varied, or set aside— Or. 37, r. 4
property in danger of being wrongfully sold in execution— Or. 37, r. 1 (a)

INSOLVENCY—
plaintiff—insolvency of—and security for costs— Or. 22, r. 8
security for costs on insolvency of plaintiff— Or. 22, r. 8

INSPECTION—
banker's books and other books of accounts—inspection of— Or. 11, r. 17

INSPECTION.—(Concld.)
business books—giving copies of entries in—instead of inspection— Or. 11, r. 19
documents,—of—not referred to in pleadings and affidavits— Or. 11, r. 18 (2)
——referred to in pleadings and affidavits— Or. 11, r. 15
——power of Court to order inspection of— S. 27
non-compliance with order for— Or. 11, r. 21
notice to produce documents for— Or. 11, r. 15
Or. 11, r. 16
order for,—of documents— Or. 11, r. 18
——of property which is subject-matter of suit— Or. 37, r. 7
place and time—appointing—for inspection— Or. 11, r. 17
property—inspection of—by Court— Or. 18, r. 18
property which is subject-matter of suit—inspection of— Or. 37, r. 7

INSTALMENTS—
decree or subsequent order—may direct payment by— Or. 20, r. 11

INTEREST—
awarded by Court—when— S. 31
costs—on— S. 32 (3)
deposit in Court—interest not allowed to plaintiff after notice of— Or. 24, r. 3
proclamation of sale—liability for interest not covered by— Or. 21, r. 86 (3)
rate of interest in suits for money— S. 31
Regulation I of 1010—how modified— S. 31 (2) & (3)
refused—when deemed to have been— S. 31 (4)
restitution—interest payable by way of— S. 108 (1)

INTEREST.—(Concld.)
reversal of decree—order for payment of interest on— S. 108 (1)
variation of decree—order for payment of interest on— S. 108 (1)

INTERLOCUTORY ORDERS—
building or land—order authorising persons to enter into— Or. 37, r. 7 (1) (b)
immediate delivery of possession of certain lands—order for— Or. 37, r. 9
——payment of money or delivery of movables—order for— Or. 37, r. 10
sale—interim—of movable property subject to speedy decay— Or. 37, r. 6
subject-matter of suit—order for detention, preservation or inspection of— Or. 37, r. 7 (1)
trustee—order against—for deposit of moneys, etc.—in Court— Or. 37, r. 10

INTERPLEADER—
admissions of parties—Court may adjudicate title on— Or. 34, r. 4 (2)
agents may not institute interpleader suits— Or. 34, r. 5
charge for plaintiff's costs— Or. 34, r. 6
claimant other than plaintiff—joinder of—as plaintiff— Or. 34, r. 4 (3) (b)
costs in interpleader suits— Or. 35, rr. 3, 4, 6
deposit of money or thing in dispute in Court— Or. 34, r. 2
hearing—procedure at first— Or. 34, r. 4
plaint in interpleader suit— Or. 34, r. 1
stay of suit brought against plaintiff (stakeholder)— Or. 34, r. 3
suit—interpleader—when may or may not be instituted— S. 68

INTERPLEADER.—(*Concld.*)

tenants may not institute interpleader suits— Or. 34, r. 5

INTERROGATORIES—

affidavits in regard to— Or. 11, rr. 8-10

answers when not sufficient— Or. 11, r. 11

*bona fide*—not exhibited— Or. 11, r. 6

consequence of failure to answer— Or. 11, r. 21

corporation—where party to be interrogated is— Or. 11, r. 5

costs of— Or. 11, r. 3

discovery by— Or. 11, r. 1

evidence—using answers to interrogatories in evidence at trial— Or. 11, r. 22

form of— Or. 11, r. 4

——of affidavit in answer— Or. 11, r. 9

irrelevant— Or. 11, r. 1 proviso

issues—framing of—from answers to— Or. 14, r. 3 (*b*)

leave of Court—can be delivered only by— Or. 11, r. 1 Or. 11, r. 2

lunatic or minor—where opposite party is— Or. 11, r. 23

not material at the stage they are delivered— Or 11, r. 6

order to answer—or answer further— Or. 11, r. 11

power of Court to order delivery and answering of,— S. 27 (*a*)

scandalous or irrelevant— Or. 11, r. 6

set of interrogatories—only one allowed— Or. 11, r. 1 proviso

striking out prolix, unnecessary or scandalous interrogatories— Or. 11, r. 7

submitting of interrogatories to Court before delivery— Or. 11, r. 2

time within which application lies for striking out— Or. 11, r. 7

INVESTIGATION (LOCAL)—

commission for— Or 26, rr. 9, 10

INVESTIGATIONS OF CLAIMS AND OBJECTIONS IN EXECUTION—

*See* Attachment.

IRREGULARITY—

appeal—and irregularity affecting jurisdiction or merits— S. 78

——irregularity in orders may be made a ground of objection in— S. 83 (1)

attaching property—irregularity in— Or. 21, r. 87

immovable property,—in publishing and conducting sale of— Or. 21, r. 87

moveable property,—irregularity in sale of—not to vitiate sale— Or 21, r. 75

revision—irregularity may be a ground for— S. 89

sale-certificate—of moveable property—irregularity in—not to vitiate sale— Or. 21, r. 75

second appeal—irregularity may be a ground for— S. 79

ISSUES—

additional—power of Court to frame— Or. 14, r. 5 (1)

agreement to state questions of law or fact in form of— Or. 14, r. 6

amend,—power of Court to— Or. 14, r. 5 (1)

burden of proof— Or. 18, r. 3

Court to frame issues— Or. 14, r. 1 (5)

decision on each issue—when Court to state— Or. 20, r. 5

defence—where defendant at first hearing of suit makes no— Or. 14, r. 1 (6)

documents—examination of—before framing issues— Or. 14, r. 4

ISSUES.—(*Concld.*)

examination of documents, parties or witnesses before framing issues— Or. 14, r. 1 (5) Or. 14, r. 4

fact—what is an issue of— Or. 14, r. 1 (4)

framing of—by appellate Court— Or. 40, r. 24

judgment—Court may pronounce—at once—when—Or. 15, rr. 1, 2

——on questions stated by agreement in form of issues— Or. 14, r. 7

jurisdiction—objection to —to be taken at or before settlement of issues— S. 20

law—what is an issue of— Or. 14, r. 1 (4)

——when may Court try issues of—first— Or. 14, r. 2

materials from which issues may be framed— Or. 14, r. 3

objection to place of suing must be taken at or before settlement of,— S. 20

objections to findings on issues referred to lower Court— Or. 40, r. 25

procedure where parties are at issue— Or. 15, r. 3

resettling of,—by appellate Court— Or. 40, r. 23

second appeal—power of High Court to determine issues of fact in— S. 81

strike out issues—power of Court to— Or. 14, r. 5 (2)

summons may be for settlement of,— Or. 5, r. 5

JAIL—*See* Arrest and Detention: Imprisonment.

service on defendant in— Or. 5, r. 23

JOINDER—*See* Plaintiffs: Defendants: Causes of Action: Misjoinder: Non-joinder.

JOINDER.—(*Contd.*)

**(1) of plaintiffs—**

appeal—misjoinder of plaintiffs—and— S. 78

election—when plaintiffs may be put to— Or. 1, r. 2

joinder of plaintiffs— Or. 1, r. 1

joinder of plaintiffs and causes of action— Or. 2, r. 3

judgment for one or more of the plaintiffs— Or. 1, r. 4 (*a*)

numerous plaintiffs having same interest— Or. 1, r. 8

separate trials—power to order—where joinder improper— Or. 1, r. 2

who may be joined as plaintiffs— Or. 1, r. 1

**(2) of defendants.**

appeal—misjoinder of defendants and— S. 78

contract—parties liable on same— Or. 1, r. 6

joinder of defendants— Or. 1, r. 3

judgment against one or more of the defendants— Or. 1, r. 4 (*b*)

negotiable instrument—parties liable on same— Or. 1, r. 6

numerous defendants having same interest— Or. 1, r. 8

plaintiff when in doubt from whom redress is to be sought— Or. 1, r. 7

relief claimed—every defendant need not be interested in the whole— Or. 1, r. 5

who may be joined as defendants— Or. 1, r. 3

**(3) of causes of action—**

administrator or executor —joinder of causes of action by or against— Or. 2, r. 5

appeal—misjoinder of causes of action and— S. 78

JOINDER,—(*Concld.*)

heir—joinder of causes of action by or against— Or. 2, r. 5

immoveable property —in suits for recovery of— Or. 2, r. 4

joinder of causes of action— Or. 2, r. 3

separate trials of causes of action— Or. 2, r. 6

**(4) of respondents—** Or. 40, r. 19

**(5) of trustees, executors and administrators—**

husband of married executrix, etc., not to be joined as a party— Or. 31, r. 3

when to be joined as parties— Or. 31, r. 2

JOINT—

attachment of share in joint property—application for— Or. 21, r. 11 (*b*)

bid of co-sharer at sale of share in joint property— Or. 21, r. 85

execution—application for —by joint decree-holder— Or. 21, r. 13

promisors—joint— Or. 1, r. 6

JUDGE—

amendment of memorandum of appeal to be signed by—Or. 40, r. 3 (3)

arrest—exemption of Judge from— S. 100

definition of,— S. 2 (8)

dissenting from judgment of Court— Or. 40, r. 33

——need not sign decree— Or. 40, r. 34 proviso

evidence—power of judge to deal with—taken before another judge— Or. 18, r. 14

——when unable to make memorandum of—to record reasons— Or. 18, r. 13

execution of document by —on failure of judgment-debtor to do so— Or. 21, r. 32

JUDGE.—(*Concld.*)

judgment written by predecessor—power of—to pronounce— Or. 20, r. 1

procedure where Judge has vacated office before signing decree— Or. 20, r. 8

public officer—is a— S. 2 (16) (*a*)

registration of documents by— Or. 21, r. 32 (6)

review—application for—and— Or. 45, r. 2

JUDGMENT—

admissions—judgment on— Or. 12, r. 6

altered—not to be—except under Sec. 116, or on review— Or. 20, r. 3

amendment of— S. 116

arrest before judgment— Or. 36, r. 1

attachment before judgment— Or. 36, r. 5

award—judgment on— Or. 39, r. 16

case submitted for opinion of Court by parties—judgment in— Or. 35, r. 5 (2)

certified copy of,—furnishing— Or. 20, r. 20; Or. 40, r. 35

contents, date and signature of,— Or. 20, rr. 3, 4; Or. 40; r. 30

death of party after conclusion of hearing does not affect,— Or. 22, r. 6

decree should conform with,— Or. 20, r. 6

definition of,— S. 2 (9)

issue—when Court to state its decision on each— Or. 20, r. 5

issues—judgment on questions stated by agreement in form of— Or. 14, r. 7

judgment when there are several plaintiffs or defendants— Or. 1, r. 4

JUDGMENT,—(Concld.)
non-appealable cases—contents of judgments in— Or. 20, r. 4 (1)
predecessor — judgment written by judges— Or. 20, r. 1 (2)
when and where to be pronounced — S. 30; Or. 20, r. 1

JUDGMENT-DEBTOR—
adjustment of decree out of Court— Or. 21, r. 2 (2)
attachment of moveable property not in possession of,— Or. 21, r. 44
——of share of judgment-debtor in moveables— Or. 21, r. 45
——property liable to— S. 52
certificate to—authorizing him to alienate attached property— Or. 21, r. 80 (2)
death of,—before satisfaction of decree— S. 43
definition of,— S. 2 (10)
discharge of,—pending application for stay of execution— Or. 21, r. 24 (2)
document—failure of judgment-debtor to execute— Or. 21, r. 32
examination of—as to his property— Or. 21, r. 39
execution against—when he is a legal representative— S. 45
——simultaneous—against person and property— Or. 21, r. 19
exemption from arrest under civil processes— S. 100
failure of,—to execute document or endorse negotiable instrument— Or. 21, r. 32
instalments — satisfaction of decree by— Or. 20, r. 11
legal representative—execution against— S. 45

JUDGMENT-DEBOTR,—(Concld.)
negotiable instrument—failure of judgment-debtor to endorse— Or. 21, r. 32
payment of decree out of Court,—may inform Court of— Or. 21, r. 2 (2)
postponement of sale to raise amount of decree— Or. 21, r. 80
resistance by,—to delivery of possession in execution—Or. 21, r. 95
satisfaction — application by judgment-debtor to certify— Or. 21, r. 2 (2)
——of decree by instalments— Or. 20, r. 11
sale—setting aside where judgment-debtor has no saleable interest— Or. 21, r. 88
——on deposit of judgment-debt— Or. 21, r. 86
——for material irregularity or fraud— Or. 21, r. 87
stay of execution—application for— Or. 21, r. 24; Or. 40, r. 5
——pending suit between decree-holder and— Or. 21, r. 27
transfer *pendente lite* by judgment-debtor— Or. 21, r. 99
transferee of decree to hold subject to equity of judgment-debtor— S. 42

JURISDICTION—
acquiescence of defendant residing outside— S. 19 (b)
appeal—irregularity not affecting jurisdiction— S. 78
attachment before judgment of property outside jurisdiction— Or. 36, r. 6
——not in execution—of property outside jurisdiction,— S. 101

JURISDICTION.—(Contd.)

cause of action—and jurisdiction— S. 19 (c)

joinder of causes of action and jurisdiction— Or. 2, r. 3 (2)

commission to examine witnesses—

(1) about to leave jurisdiction— Or. 26, r. 4 (1) (b)

(2) residing beyond jurisdiction— Or. 26, r. 4 (1) (a)

(3) residing within jurisdiction— Or. 26, rr. 1, 3

compensation for wrongful arrest, etc., and,— S. 75

corporation where deemed to carry on business— S. 19, Expln. II

costs...want of jurisdiction no bar to power of Court to award— S. 32 (1)

error not affecting,—and appeal— S. 78

examination of witness about to leave,— Or. 18, r. 15 (1)

execution of decree—when lands situated in more than one,— Or. 21, r. 3

foreign judgment, and presumption as to,— S 13

——passed without jurisdiction— S. 12 (a)

inherent jurisdiction— S. 115

place of suing—objection as to— S. 20

pecuniary jurisdiction—limits of— S. 5

plaint to contain facts showing Court has jurisdiction— Or. 7, r. 1 (f)

relinquishment of part of claim to bring suit within— Or. 2, r. 2 (1)

service of summons where defendant resides outside jurisdiction— Or. 5, r. 21

JURISDICTION,—(Concld.)

suit against corporations—and— S. 19, Exp. II

——for "determination of any other right to or interest in immovable property"— S. 15 (d)

——for compensation for wrong to person or movables— S. 18

——immovable property situate in different jurisdictions— S. 16

——wrong to land— S. 15 (e)

KANDUKRISHI—

Civil Courts not to take cognisance of suit relating to,—Viruthi or Service Inam lands without Government sanction— S. 8

LAND—See Immovable property.

attachment—liable to—in execution of decree— S. 52 (1)

LAND REVENUE—

neglect to pay—and delivery of possession to party who pays— Or. 37, r. 9

LANDLORD—

interpleader suit by tenant against— Or. 34, r. 5

LANGUAGE—

of Courts— S. 102

LAW—

appeal from decree in pauper suits when decree contrary to law— Or. 48, r. 1

issues of—when may be tried first— Or. 14, r. 2

issues—questions of law may by agreement be stated in form of— Or. 14, r. 6

LAW.—(*Concld.*)

pauper appeal—Court may admit—when decree contrary to law— Or. 43, r. 1

presumption of—and pleadings— Or. 6, r. 13

reference to High Court on question of law— Or. 44, r. 1

rejection of plaint where suit barred by any law— Or. 7, r. 11 (*d*)

second appeal—questions of law and— S. 79, (1) (*a*)

—— usage having the force of law and— S. 79

special or local—saving of— S. 4

LEAVE OF COURT—

appeal—urge grounds not taken in—leave to— Or. 40, r. 2

compromise by next friend or guardian—leave for— Or. 32, r. 7

concise statement—to amend, so as to make it correspond with plaint— Or. 7, r. 9 (3)

decree-holder—leave to—to bid at sale— Or. 21, r. 69

directors—for imprisonment of— Or. 21, r. 30 (2)

disability—persons under—in cases of consent on behalf of— S. 111

documents not produced—when plaint filed—to adduce in evidence— Or. 7, r. 18

execution—leave to issue—in suits between copartners— Or. 30, r. 9

guardian or next friend for compromise by— Or. 32, r. 7

husband—to execute against—decree obtained against wife— Or. 22, r. 7 (2)

interrogatories—to deliver— Or. 11, r. 1
Or. 11, r. 2

jurisdiction—to sue where all defendants do not reside within— S. 19 (*b*)

LEAVE OF COURT.—(*Concld.*)

minor—to receive money on behalf of— Or. 32, r. 6

——to compromise suits by or against— Or. 32, r. 7

——where—elects to proceed with suit in his own name— Or. 32, r. 12 (2)

numerous parties having same interest—leave to sue or be sued— Or. 1, r. 8

partner—to execute decree against—who has not been served and has not appeared— Or. 21, r. 48 (2)

pauper—to appeal as— Or. 43 r. 1

——to sue as— Or. 33, r. 2

pleader—for discharge of— Or. 3, r. 4 (2)

pleadings—to amend— Or. 6, r. 17

——to present—subsequent to written statement— Or. 8, r. 9

recovery of land—to join claims with suit for— Or. 2, r. 4

remedies—to omit one of several— Or. 2, r. 2 (3)

sale—to adjourn — when held in precincts of Court-house— Or. 21, r. 67 (1), proviso

transfer pending suit—to continue suit in case of— Or. 22, r. 10

withdrawing suit with liberty to bring fresh suit—for— Or. 23, r. 1 (2)

LEGAL REPRESENTATIVE— *See* Abatement.

accounts—power of Court executing decree to compel legal representative to produce— S. 43 (2)

defendant—legal representative of—when to be brought on record— Or. 22, r. 4 (1)

definition of,— S. 2 (11)

determination of question as to who is— Or. 22, r. 5

LEGAL REPRESENTATIVE.—(*Concld.*)
enforcement of decree passed against— S. 45
execution— when decree passed against deceased— S. 43
——when decree passed against legal representative— S. 45
extent of liability of—in execution— S. 43 (2)
joint decree-holder—legal representative of—and execution— Or. 21, r. 13
notice where execution is applied against— Or. 21, r. 20
partner—of deceased—need not be joined in suit by or against firm— Or. 30, r. 4
plaint in suit by— Or. 7, r. 4
plaintiff—legal representative of—when to be brought on record— Or. 22, r. 3 (1)

LETTER—
substitution of—for summons— Or. 5, r. 28

LETTER OF REQUEST—
for examination of witness residing outside Travancore— S. 62
Or. 26, r. 5

LIABILITY—
joint and several—on contract— Or. 1, r. 6

LIEN—
interpleader suit—lien of plaintiff in— Or. 34, r. 6
pleader—lien of—for costs and set-off— Or. 8, r. 6 (2)

LIMITATION—
execution of decree—granting injunction—and— S. 41
——limit of time for— S. 41
plaint must show grounds of exemption from law of— Or. 7, r. 6

LIMITATION.—(*Concld.*)
withdrawal of suit with permission to bring fresh suit—and— Or. 23, r. 2

LIS PENDENS—
assignment by either party pending suit— Or. 22, r. 10
——judgment-debtor—and execution— Or. 21, r. 99

LOCAL LAW—
saving of— S. 4

LUNATIC—
compromise of suit by next-friend or guardian of— Or. 32, r. 7
consent of next-friend or guardian on behalf of— S. 111
documents—affidavit of and— Or. 11, r. 23
interrogatories—affidavit in answer to—and— Or. 11, r. 23
suits by or against—procedure in— Or. 32, r. 15

MAGISTRATE—
exemption of,—from arrest under civil process— S. 100 (1)

MAINTENANCE—
right to future maintenance not attachable— S. 52 (1)

MANAGER—
notice to—as to in what capacity he is served— Or. 30, r. 5
not to appear though served —unless he is a partner— Or. 30, r. 7
of business—and service of summons— Or. 5, r. 13
of corporations—and sale of shares in execution— Or. 21, r. 76 (3)
of partnership business—and service of summons on firm— Or. 30, r. 3

MARKET VALUE—
commission to ascertain,—of property— Or. 26, r. 9

MARRIAGE—
of female party—and abatement— Or. 22, r. 7

MARRIED EXECUTRIX, ADMINISTRATRIX, OR TRUSTEE—
husband of—not a necessary party to suit by or against her— Or. 31, r. 3

MASTER OF SHIP—
is agent of owner or charterer for service of summons— Or. 5, r. 13 (2)

MATERIAL IRREGULARITY IN CONDUCTING SALE—
irregularity in publishing or conducting sale— Or. 21, r. 87
moveable property—of—not to vitiate sale— Or. 21, r. 75

MATTER—
argumentative,—in affidavits—and costs— Or. 19, r. 3 (2)

MEMORANDUM OF APPEAL—
*See* Appeal.
contents and accompaniments of— Or. 40, r. 1 (2)
cross-objection to be in the form of— Or. 40, r. 21 (2)
grounds of objection not set forth in— Or. 40, r. 2
irregularity in orders may be made a ground of objection in— S. 83 (1)

MESNE PROFITS—
attachment before determination of,— Or. 21, r. 40
claim for—may be joined with suit for recovery of land— Or. 2, r. 4
commission to ascertain— Or. 26, r. 9
decree for possession and— Or. 20, r. 12
definition of,— S. 2 (12)
plaint—statement of approximate amount in— Or. 7, r. 2

MESNE PROFITS.—(*Concld.*)
reversal of decree—order for payment of mesne profits on— S. 108 (1)

MILITARY MEN—
authority to sue or defend—how given— Or. 28, r. 1 (2)
commanding officer—meaning of— Or. 28, r. 1, Expln.
officers or soldiers who cannot obtain leave—and authority— Or. 28, r. 1 (1)
service on person authorized to sue or defend— Or. 28, r. 3
stipends and gratuities allowed by Government to—attachment of— S. 52
suits by or against— Or. 28

MINOR—*See* Guardian *ad litem*: Next-friend.
affidavit of documents by next-friend or guardian— Or. 11, r. 23
compromise by next-friend or guardian— Or. 32, r. 7
consent of next-friend given on behalf of— S. 111
co-plaintiff— Or. 32, r. 13
election by minor plaintiff on attaining majority— Or. 32, r. 12
leave of Court for compromise of suit by or against minor— Or. 32, r. 7
——to receive property under a decree on behalf of— Or. 32, r. 6
notice of application for appointment of guardian *ad litem*— Or. 32, r. 3 (4)
——to have plaint taken off the file where suit instituted without next-friend— Or. 32, r. 2 (2)
——to next-friend—when minor elects to proceed with suit in his own name— Or. 32, r. 12

MINOR.—(*Concld.*)

officer of Court as guardian *ad litem*— Or. 32, r. 4 (4)

order made in suit in which a minor is concerned—when discharged— Or. 32, r. 5 (2)

partner and attachment— Or. 21, r. 48

pleader—liability of—for costs in suit without next-friend— Or. 32, r. 2 (1)

plaint to state fact of minority— Or. 7, r. 1 (*d*)

property—receipt of — on behalf of minor under a decree— Or. 32, r. 6

representation of—by next-friend or guardian for suit— Or. 32, r. 5

repudiation of suit by minor co-plaintiff on attaining majority— Or. 32, r. 13

stay of proceedings on retirement, removal or death of next-friend— Or. 32, r. 10

suit—unreasonable or improper— Or. 32, r. 14

——when instituted without next-friend—procedure— Or. 32, r. 2

title of suit when minor elects to proceed with suit on majority— Or. 32, r. 12 (3)

MISCELLANEOUS PROCEEDINGS—

application of Code to— S. 105

MISJOINDER—*See* Joinder.

**of parties**—

appeal—no ground for reversing decree in— S. 78

objection as to—when to be raised— Or. 1, r. 13

suit not to be defeated by reason of— Or. 1, r. 9

**of plaintiffs**— Or. 1, r. 1

**of defendants**— Or. 1, r. 3

MISJOINDER.—(*Concld.*)

**of causes of action**—

appeal—no ground for reversing decree in— S. 78

in suits by or against executors, administrators, or heirs— Or. 2, r. 5

——for recovery of immoveable property— Or. 2, r. 4

objection as to—when to be raised— Or. 2, r. 7

separate trials of causes of action— Or. 2, r. 6

MISREPRESENTATION—

particulars of—must be stated in pleadings— Or. 6, r. 4

MISTAKE—*See* Defect or error.

in instituting suit in name of wrong plaintiff— Or. 1, r. 10 (1)

in judgments, decrees and orders—and amendment— S. 116

review—mistake apparent on face of record and— Or. 45, r. 1 (1)

MONEY—

assets—rateable distribution of—and decree for payment of— S. 59

attachment—liable to— S. 52

——of decree for payment of money— Or. 21, r. 51

cross-claims in suits for payment of—and execution— Or. 21, r. 17

cross-decrees in suits for payment of—and execution— Or. 21, r. 16

execution—and cross-decrees in suit for payment of— Or. 21, r. 16

——immediate—in case of money decree— Or. 21, r. 9 (1)

instalments — decree for payment of money by— Or. 20, r. 11

MONEY.—(*Concld.*)
interest—decree for payment of money and— S. 31
minor—receipt of money by next-friend or guardian under a decree— Or. 32, r. 6
mode of executing decrees for payment of— Or. 21, r. 28
——paying money under a decree— Or. 21, r. 1
money raised by judgment-debtor on his property— Or. 21, r. 80 (2), proviso.
notice—issue of—before arrest in execution of money decree— Or. 21, r. 35
payment out of Court of money payable under decree— Or. 21, r. 2
plaint in suits for recovery of money— Or. 7, r. 2
surety for payment of money under order of Court— S. 109
transfer of money-decree—and execution— Or. 21, r. 14
value of property to be attached in case of money decree— Or. 21, r. 15

MORTGAGE—
attachment—continuance of—subject to mortgage— Or. 21, r. 60
——of mortgage-decree— Or. 21, r. 51
claim for possession,—may be made in foreclosure or redemption suit— Or. 2, r. 4, proviso.
cross-claims and cross decrees in suits on mortgage—Or. 21, r. 18

MOVEABLE PROPERTY—
attachment—liable to— S. 52 (1)
attachment of—in possession of judgment-debtor— Or. 21, r. 41
——not in his possession— Or. 21, r. 10
Or. 21, r. 44

MOVEABLE PROPERTY.—(*Concld.*)
—of share of judgment-debtor in moveable property— Or. 21, r. 45
——under—and place of suing— S. 15 (*f*)
decree for delivery of—to state amount to be paid in alternative— Or. 20, r. 10
—partition of— Or. 20, r. 18 (2)
——specific moveables—and execution— Or. 21, r. 29
delivery of—order for— Or. 37, r. 10
deposit in Court of—order for— Or. 37, r. 10
distraint—under—and place of suing— S. 15 (*f*)
execution—decree for specific moveables— Or. 21, r. 29
interim sale of—where subject to speedy decay— Or. 37, r. 6
minor—receipt of moveable property on behalf of— Or. 32, r. 6
partition of—decree for— Or. 20, r. 18 (2)
sale of—in execution— Or. 21, rr. 71-78
——where subject to speedy decay— Or. 21, r. 41
seizure of—in dwelling house— S. 54

MULTIFARIOUSNESS—
appeal—no ground for reversing decree in— S. 78

NEGLIGENCE—
receiver—loss occasioned by gross negligence of— Or. 38, r. 3 (*d*)

NEGOTIABLE INSTRUMENT—
*See* Bill of exchange: Hundis: Promissory note.
attachment of— Or. 21, r. 49
S. 52 (1)
——debt not secured by—Or. 21, r. 44 (*a*)
execution of decree for endorsement of— Or. 21, r. 32

NEGOTIABLE INSTRUMENT.—(*Concld.*)
lost,—suit on— Or. 7, r. 16
sale of,—in execution— Or. 21, r. 73
transfer of,—in execution— Or. 21, r. 77

NEXT FRIEND—*See* Minor: Guardian *ad litem*.
appointment of new—application for— Or. 32, r. 8 (2)
compromise by— Or. 32, r. 7
consent of—on behalf of persons under disability— S. 111
defendant cannot act as— Or. 32, r. 4 (1)
minor—representation of—by next-friend— Or. 32, r. 5
——to sue by next-friend— Or. 32, r. 1
notice of application for taking plaint off file in suit without— Or. 32, r. 2 (2)
——to—when minor elects to proceed with suit in his own name— Or. 32, r. 12 (5)
pleader—liability of—for costs—in suit for minor without— Or. 32, r. 2 (1)
receipt by—of property under a decree— Or. 32, r. 6
removal of— Or. 32, r. 9
retirement of— Or. 32, r. 8
security for costs already incurred—retiring next-friend to give— Or. 32, r. 8 (1)
——when next-friend required to give— Or. 32, r. 6 (2)
stay of proceedings on retirement, removal, or death of— Or. 32, r. 10 (1)
suit instituted without next-friend — procedure where— Or. 32, r. 2
who may act as— Or. 32, r. 4

NON-APPEARANCE—*See* Appearance.

NON-JOINDER—*See* Joinder.
objection as to—when to be taken— Or. 1, r. 13
suit not to be defeated by reason of— Or. 1, r. 9

NOTICE—
adjourned hearing of—to be given to defendant—Or. 9, r. 6 (1) (*c*)
admission of opponent's case—of— Or. 12, r. 1
appellate Court to give to lower Court—when— Or. 40, r. 13 (1)
application—of—for order for detention, preservation or inspection of subject-matter of suit— Or. 37, r. 8
arbitration—of application to file an agreement to refer to— Or. 39, r. 17 (3)
arbitrator—to appoint new— Or. 39, r. 5
arrest—issue of notice before— Or. 21, r. 35
award made under an order of reference—of the filing of— Or. 39, r. 10
award made on reference without intervention of Court—for filing— Or. 39, r. 20
Court—when property sought to be attached is in custody of— Or. 21, r. 50
Dewan of Travancore—of suit against— S. 65
decree—notice to set aside— Or. 9, r. 14
——notice—to set aside—Or. 21, r. 51 (1)(*b*)
decree-holder—to—for recording payment to him—out of Court— Or. 21, r. 2 (2)
documents to admit— S. 30 (*a*)
Or. 12, r. 2
——form of— Or. 12, r. 3
——to produce— Or. 12, r. 8
——for inspection— Or. 11, r. 15
Or. 11, r. 16
execution against legal representative— Or. 21, r. 20 (1) (*b*)
——by transferee of decree— Or. 21, r. 14
——more than one year after date of decree—Or. 21, r. 20 (1)(*a*)

NOTICE.—(*Concld.*)
- facts—to admit— Or. 12, r. 4
- ——form of— Or. 12, r. 5
- firm—notice to accompany summons in suit against— Or. 30, r. 5
- guardian *ad litem*—of application for appointment of— Or. 32, r. 3 (4)
- injunction—to opposite party before granting— Or. 37, r. 3
- judgment-debtor—to—prohibiting him from transferring his share in moveables— Or. 21, r. 45
- legal representative—notice before executing decree against— Or. 21, r. 20
- next-friend—of application to have plaint taken off file in suit without— Or. 32, r. 2 (2)
- ——to—when minor elects to proceed with suit— Or. 32, r. 12 (5)
- notices to be in writing— S. 106
- pauperism—notice to take evidence of— Or. 33, r. 6
- payment into Court—of— Or. 24, r. 2
- pleading — allegation of notice in— Or. 6, r. 11
- public officer—of suit against— S. 65
- purda lady—to—to withdraw at seizure of property in a dwelling house— S. 54 (3)
- review—of application for—to opposite party— Or. 45, r. 4 (2) (*a*)
- service of— Or. 46, r. 2
- surety—to — for enforcement of his liability— S. 109 proviso.
- umpire—to appoint new— Or. 39, r. 5

NUISANCE—
- suits relating to public nuisance— S. 71
  *See* Public Nuisance.

OATH—
- oath on affidavits by whom to be administered— S. 103

OBJECTION—
- appeal—grounds of objection in— Or. 40, rr. 1-2
- ——irregularity in orders as ground of objection in— S. 83 (1)
- attachment—objection to— Or. 21, r. 56
- cross-objections by respondent— Or. 40, r. 21
- execution of decree—objections to— Or. 21, r. 21 (2)
- findings of lower Court on issues referred—as to— Or. 40, r. 24
- interrogatories—objections to—by affidavit in answer— Or. 11, r. 6
- jurisdiction—objection as to—when to be taken— S. 20
- misjoinder or non-Joinder of parties—as to—when to be taken— Or. 1, r. 13

OFFICER—*See* Public Officer: Officer of Court.
- arrest — judicial officer when exempt from— S. 100 (1)

OFFICER OF COURT—
- amendment of memorandum of appeal to be signed by— Or. 40, r. 3 (3)
- costs incurred by—as guardian *ad litem*— Or. 32, r. 4 (4)
- Court-sale—not to bid for or purchase property at— Or. 21, r. 70
- execution of documents by—on failure of judgment-debtor— Or. 21, r. 32
- guardian *ad litem*—Court may appoint its officer as— Or. 32, r. 4 (4)
- registration of documents by— Or. 21, r. 32 (6)
- registry by—of appeal on admission— Or. 40, r. 9

OMISSION—*See* Irregularity.
- to frame and try issues, by lower Court— Or. 40, r. 24
- to sue in respect of a portion of a claim— Or. 2, r. 2 (2)
- to sue for one of several reliefs— Or. 2, r. 2 (3)
- to sue for portions of arrears of rent— Or. 2, r. 2, Ill.

ONUS—
- burden of proving some issues lies on the other party—where— Or. 18, r. 3
- party need not plead any fact as to which onus lies on other side— Or. 6, r. 13

ORDER—*See* Interlocutory Orders.
- affidavit of documents—for— Or. 11, r. 12
- amendment of— S. 116
- appealable orders— S. 82; Or. 42, r. 1
- appeal from orders—procedure in— S. 86; Or. 42, r. 2
- commission—order for issue of,— Or. 26, r. 2
- definition of,— S. 2 (13)
- dismissal for default—order for—is not a decree— S. 2 (2)
- error in order may be ground of objection in appeal from final decree— S. 83 (1)
- execution of orders—provisions relating to— S. 33
- interlocutory—*See* Interlocutory Orders.
- orders to be in writing— S. 106
- order under S. 40 (execution proceedings) is a decree— S. 2 (2)
- service of— Or. 46, r. 2

PARTICULARS—
- fraud, *etc.*,—in case of— Or. 6, r. 4
- further and better—when required— Or. 6, r. 5
- when to be given— Or. 6, r. 4

PARTIES—*See* Plaintiff : Defendant : Cause of Action.
- adding of — Or. 1, r. 10
- ——respondent— Or. 40, r. 10
- adjourned hearing — procedure where parties fail to appear at— Or. 17, r. 2
- administrators—joinder of— Or. 31, r. 2
- agreement of—proceedings on— Or. 35
- beneficiaries— Or. 31, r. 1
- commissioner—appearance of parties before— Or. 26, r. 18 (1)
- ——examination of parties by— Or. 26, r. 16 (*a*)
- common ground—and reversal of decree in appeal— Or. 40, r. 4
- consent on behalf of parties—under disability— S. 111
- contract—joinder of parties liable on same— Or. 1, r. 6
- death of party and abatement of suit— Or. 22, r. 1 *See* Abatement.
- defendants—who may be joined as— Or. 1, r. 3
- evidence,—refusal of party to give—when required by Court— Or. 16, r. 20
- examination of,—by Court—at first hearing— Or. 10
- ——in order to frame issues— Or. 14, r. 1 (5)
- execution — questions in—between parties to suit— S. 40
- executors—joinder of— Or. 31, r. 2
- insolvent plaintiff and continuance of suit by assignee or receiver— Or. 22, r. 8
- joinder of plaintiffs— Or. 1, r. 1
- ——defendants— Or. 1, r. 3
- legal representative of plaintiff—when to be brought on record— Or. 22, r. 3

PARTIES.—(*Concld.*)
——defendant—when to be brought on record— Or. 22, r. 4
marriage of female party—no abatement of suit by— Or. 22, r. 7
meaning of "parties to the suit" in S. 40— S. 40, Expln.
misjoinder of parties—*See* Misjoinder.
negotiable instrument—joinder of parties liable on same— Or. 1, r. 6
non-joinder of parties—*See* Non-joinder.
numerous parties having same interest— Or. 1, r. 8
objection as to misjoinder and non-joinder—when to be taken— Or. 1, r. 13
oral examination of party or companion of party— Or. 10, r. 2
personal appearance of—when can or cannot be ordered— Or. 5, rr. 3, 4
plaint to be amended when defendant added as a party— Or. 1, r. 10 (4)
plaintiffs—who may be joined as— Or. 1, r. 1
power of Court to strike out or add parties— Or. 1, r. 10 (2)
promisors—joinder of— Or. 1, r. 6
reference—application by parties to suit for order of— Or. 39, r. 1
relators as parties to charity suits— S. 72
——to suits relating to public nuisance,— S. 71
respondents—to make order for or against— Or. 40, r. 32
restitution by— S. 108
trustees—joinder of— Or. 31, r. 2
witnesses—rules as to—to apply to parties— Or. 16, r. 21

PARTITION—
commission to make partition— S. 61 (*d*)
Or. 26, r. 13
Government—partition of estate paying revenue to— S. 46
immoveable property—decree in suit for partition of— Or. 20, r. 18 (2)
moveable property—decree in suit for partition of— Or. 20, r. 18 (2)
place of suing—suit for partition and— S. 15 (*b*)

PARTNERS—*See* Firm.
accounts on attachment of a partner's share— Or. 21, r. 47
appearance of— Or. 30, r. 6
——under protest— Or. 30, r. 8
attachment — partnership property when liable to— Or. 21, rr. 47, 48
co-partners—suits between— Or. 30, r. 9
disclosure of names of partners in defendant's firm—Or. 30, r. 1 (1)
——in plaintiff's firm— Or. 30, r. 2 (1)
dissolution of partnership—decree in suit for — Or. 20, r. 15
execution in suits between co-partners— Or. 30, r. 9
——of decree against a firm—Or. 21, r. 48
——of decree against a partner— Or. 21, r. 47
firm name—partners may be sued in— Or. 30, r. 1
——partners may sue in— Or. 30, r. 1
leave of Court to execute decree in suits between co-partners— Or. 30, r. 9
——to execute decree against a partner personally— Or. 21, r. 48
legal representative of deceased partner not necessary party— Or. 30, r. 4

PARTNERS.—(*Concld.*)
manager not to appear though served unless he is a partner— Or. 30, r. 7
notice to accompany summons in suits against firm— Or. 30, r. 5
——served—when deemed to be served as partners— Or. 30, r. 5
receiver—on attachment of a partner's share— Or. 21, r. 47 (2)
service of summons on firm—how effected— Or. 30, r. 3
——firm which has been dissolved— Or. 30, r. 3, proviso
signature and verification of pleadings in suit by firm— Or. 30, r. 1 (2)
stay of suit on failure to disclose names of partners— Or. 30, r. 2 (2)

PAUPER—
appeals—pauper— Or. 43
——when Court may admit— Or. 43, r. 1, proviso.
application for leave to sue as— Or. 33, r. 2
——presentation of— Or. 33, r. 3
——procedure on granting of— Or. 33, r. 8
——subsequent—when not allowed— Or. 33, r. 15
application for leave to appeal as— Or. 43, r. 1
rejection of— Or. 43, r. 1, proviso.
——inquiry into pauperism— Or. 43, r. 2
cause of action—when none shown in application— Or. 33, r. 5 (*d*)
commission—examination of applicant by— Or. 33, r. 4 (2)
costs of application and inquiry into pauperism— Or. 33 r. 16
——where pauper succeeds— Or. 33, r. 10
court-fees to be first charge on subject-matter of suit— Or. 33, r. 10

PAUPER.—(*Concld.*)
——when pauper fails or is dispaupered— Or. 33, r. 11
——when pauper succeeds— Or. 33, r. 10
definition of,— Or. 33, r. 1, Expln.
dispaupering— Or. 33, r. 9
evidence of applicant's pauperism— Or. 33, r. 5
examination of applicant— Or. 33, r. 4
fraudulent disposal of property by pauper— Or. 33, r. 5 (*c*)
Government—charge of—for Court-fees—on subject-matter of suit— Or. 33, r. 10
——application by,—or payment of Court-fees— Or. 33, r. 12
pleader—when copy of decree to be sent to— Or. 33, r. 14
——to be deemed a "party"—Or. 33, r. 13
hearing of application for leave to sue as pauper— Or. 33, r. 7
inquiry into pauperism of appellant— Or. 43, r. 2
refusal of application to sue as pauper—effect of— Or. 33, r. 15
rejection of application for leave to sue as— Or. 33, r. 5
transfer of interest—by—in subject-matter of proposed suit— Or. 33, r. 5 (*e*)

PAYMENT—*See* Payment into Court : Payment out of Court.
to be specially pleaded in defence— Or. 8, r. 2

PAYMENT INTO COURT—
costs where amount claimed deposited in Court— Or. 24, r. 4
deposit by defendant in Court of amount in satisfaction of claim— Or. 24, r. 1
——may be paid to plaintiff— Or. 24, r. 2
interest on deposit not allowed to plaintiff after notice— Or. 24, r. 3
money under decree,—of— Or. 21, r. 1

PAYMENT INTO COURT.—(*Concld.*)

money held as trustee for another—of— Or. 37, r. 10

money admitted to belong to another—of— Or. 37, r. 10

notice of deposit to plaintiff— Or. 24, r. 2

procedure where plaintiff accepts deposit—in full or part satisfaction of his claim— Or. 24, r. 4

property admitted to belong to another—deposit in Court of— Or. 37, r. 10

PAYMENT OUT OF COURT—

certified—to be— Or. 21, r. 2 (2)

money payable under decree—of— Or. 21, r. 2

uncertified payment—when not recognized by Court— Or. 21, r. 2 (3)

PECUNIARY JURISDICTION—

of Courts— S. 5

PENDING SUIT—

when a bar to trial of subsequently instituted suit— S. 9

PENSION—

political—not attachable— S. 52

PERFORMANCE—

to be specially pleaded in defence— Or. 8, r. 2

PLACE OF SUING—*See* Jurisdiction.

acquiescence of defendant—and— S. 19 (*b*)

compensation for wrong to immoveable property—suits for— S. 15 (*e*)

——person or moveables—suits for— S. 18

contracts—suits on— S. 19

foreclosure—suit for— S. 15 (*c*)

grade—suits to be instituted in Court of lowest— S. 14

immoveable property—suits for recovery of— S. 15 (*a*)

PLACE OF SUING.—(*Concld.*)

jurisdiction of different Courts—where land is situated within— S. 16

land—suits for determination of any right to or interest in— S. 15 (*d*)

land situate within jurisdiction of different Courts— S. 16

local limits of jurisdiction of Courts—where uncertain— S. 17

partition—suit for— S. 15 (*b*)

redemption—suit for— S. 15 (*c*)

residence of defendant—and— S. 19

sale of mortgaged property—suit for— S. 15 (*c*)

PLAINT—

amended copy of—to be served on newly added defendant— Or. 1, r. 10 (4)

amendment of— Or. 6, r. 17

breach of trust—allegation of—in— Or. 6, r. 4

concise statement— Or. 7, r. 9 (1)

condition precedent—specification of—in— Or. 6, r. 6

copy of—to accompany summons— Or. 5, r. 2

documents—list of—to be annexed to— Or. 7, r. 9 (1)

——relied on— Or. 7, r. 14 (2)

——inspection of—mentioned in plaint— Or. 11, r. 15

——not in possession of plaintiff—statement in plaint as to— Or. 7, r. 15

——not produced when plaint filed—inadmissibility of— Or. 7, r. 18

production of—on which plaintiff sues— Or. 7, r. 14

facts which law presumes in plaintiff's favour need not be stated in— Or. 6, r. 13

PLAINT.—(*Contd.*)

failure to amend within times specified by Court —effect of— Or. 6, r. 18
forms of—and their use— *See* Forms of Plaints. Or. 6, r. 3
fraud—allegations of— Or. 6, r. 4
fraudulent intention—how to be pleaded in— Or. 6, r. 10
further or other relief need not be claimed— Or. 7, r. 7
general relief—need not be asked for— Or. 7, r. 7
immoveable property—where suit is for— Or. 7, r. 3
implied contract—allegation of—in— Or. 6, r. 12
inconsistent allegations of fact—adding of—in plaint— Or. 6, r. 7
interpleader suits—plaint in— Or. 34, r. 1
knowledge—how to be pleaded— Or. 6, r. 10
liability—of defendant—plaint must disclose— Or. 7, r. 5
limitation law—plaint must show grounds of exemption from— Or. 7, r. 6
malice—how to be pleaded— Or. 6, r. 10
material facts only—plaint to contain— Or. 6, r. 2
misrepresentation—allegation of—in— Or. 6, r. 4
money suit—in— Or. 7, r. 2
negotiable instrument—suit on lost— Or. 7, r. 16
new ground of claim in plaint—raising— Or. 6, r. 7
notice—how to be pleaded— Or. 6, r. 11
particulars to be contained in plaint— Or. 7, r. 1
procedure on admitting plaint— Or. 7, r. 9
——rejecting plaint— Or. 7, r. 12
——returning plaint— Or. 7, r. 10 (2)

PLAINT.—(*Concld.*)

rejection of, — Or. 7, r. 11
rejection of,—where does not preclude presentation of fresh plaint— Or. 7, r. 13
relief claimed—plaint must state specifically— Or. 7, r. 7
——general relief need not be asked for— Or. 7, r. 7
——when found on separate grounds— Or. 7, r. 8
representative—where plaintiff sues as— Or. 7, r. 4
return of plaint—an appealable order— Or. 43, r. 1
——for presentation to proper Court— Or. 7, r. 10 (1)
shop-book—production of— Or. 7, r. 17
signing of— Or. 6, r. 14
signing and verifying in suit—by corporations— Or. 29, r. 1
——by firm in firm name— Or. 30, r. 1
——by Government— Or. 27, r. 1
striking out unnecessary, scandalous or embarrassing matter from— Or. 6, r. 16
suits instituted by presenting plaint— S. 24
Or. 4, r. 1
undue influence—allegation of—in— Or 6, r. 4
verification of— Or. 6, r. 15
wilful default—allegation of—in— Or. 6, r. 4

PLAINTIFF—*See* Parties : Plaint.

abandonment of part of claim by— Or. 23, r. 1
amendment of plaint— *See* Plaint.
appearance of one of several plaintiffs for others— Or. 1, r. 12
appearance of plaintiff in person—when may be ordered— Or. 5, r. 3

PLAINTIFF.—(*Contd.*)

assignment by—of interest in suit— Or. 22, r. 10

consent of person added as plaintiff— Or. 1, r. 10 (3)

consequence of non-attendance of—when ordered to appear in person— Or. 9, r. 12

costs of postponement though not serving summons in due time— Or. 9, r. 6 (2)

death of—*See* Abatement.

dismissal of suit when plaintiff does not appear at the hearing— Or. 9, r. 8

fresh suit—decree against plaintiff by default bars— Or. 9, r. 9

insolvency of—when bars suit— Or. 22, r. 8

joinder of plaintiffs— Or. 1, r. 1

judgment for one or more of the plaintiffs— Or. 1, r. 4 (*a*)

legal representative of deceased—when to be brought on record— Or. 22, r. 3 (1)

marriage of female—suit not abated by— Or. 22, r. 7

name, description and residence of—must be stated in plaint— Or. 7, r. 1 (*b*)

non-attendance of one of several— Or. 9, r. 10

numerous plaintiffs having same interest— Or. 1, r. 8

omission to sue for all reliefs— Or. 2, r. 2 (3)

——in respect of portion of a claim— Or. 2, r. 2 (3)

personal appearance of— Or. 5, r. 3; Or. 10, r. 4 (1)

procedure when only plaintiff appears at the hearing— Or. 9, r. 6

relinquishment of part of claim— Or. 2, r. 2 (2)

representative character—suit brought in— Or. 7, r. 4

PLAINTIFF.—(*Concld.*)

right to begin— Or. 18, r. 1

"same interest"— Or. 1, r. 8

security for costs—when may be required from plaintiff— Or. 25, r. 1

substitution of plaintiff— Or. 1, r. 10 (1)

withdrawal of suit by— Or. 23, r. 1

wrong plaintiff—suit in name of— Or. 1, r. 10 (1)

PLEADER—

appearance of party by— Or. 3, r. 1

appointment of— Or. 3, r. 4

arrest—when exempt from— S. 100

costs—liability for—in suit for minor without next-friend— Or. 32, r. 2

costs—lien for— Or. 8, r. 6

definition of,— S. 2 (14)

Government,—for—*See* Government Pleader.

leave of Court for discharge of— Or. 3, r. 4 (2)

pleadings when to be signed by— Or. 6, r. 14

refusal or inability of—to answer qustions relating to suit— Or. 10, r. 4

service of process on— Or. 3, r. 5

PLEADINGS GENERALLY—*See* Plaint : Written Statement.

amendment of— Or. 6, r. 17

ascertainment whether allegations in—are admitted or denied— Or. 10, r. 1

breach of trust—particulars of—to be stated in— Or. 6, r. 4

condition precedent—when to be distinctly specified in— Or. 6, r. 6

contract—denial of— Or. 6, r. 8

——implied—how to be pleaded— Or. 6, r. 12

definition of,— Or. 6, r. 1

PLEADINGS GENERALLY.—(Contd.)
- departure in pleadings by new ground or inconsistent allegation— Or. 6, r. 7
- document—when effect only of—to be stated— Or. 6, r. 9
- embarrassing pleadings— Or. 6, r. 16
- facts presumed by law in plaintiff's favour need not be alleged— Or. 6, r. 13
- failure to amend within time fixed by Court— Or. 6, r. 18
- forms of—and their use— Or. 6, r. 3
- fraud —particulars of—to be stated in— Or. 6, r. 4
- fraudulent intention—how to be pleaded— Or. 6, r. 10
- inconsistent allegations must be by amendment— Or. 6, r. 7
- inspection of documents referred to in,— Or. 11, r. 15
- judgment upon admission in— Or. 12, r. 6
- knowledge — how to be pleaded— Or. 6, r. 10
- malice—how to be pleaded— Or. 6, r. 10
- material facts only—pleadings to state— Or. 6, r. 2
- meaning of— Or. 6, r. 1
- misrepresentation— particulars of— Or. 6, r. 4
- notice—how to be pleaded— Or. 6, r. 11
- onus—and facts which need not be pleaded— Or. 6, r. 13
- particulars—when necessary to be given in— Or. 6, r. 4
- ——further and better statement of— Or. 6, r. 5
- scandalous matter in— Or. 6, r. 16
- signing of— Or. 6, r. 14
- signing and verifying in suits by corporations— Or. 29, r. 1
- ——by firm in firm name— Or. 30, r. 1
- ——by Government— Or. 27, r. 1
- subsequent pleadings—when allowed— Or. 8, r. 9

PLEADINGS GENERALLY.—(Concld.)
- time within which pleadings should be amended— Or. 6, r. 18
- undue influence—particulars of— Or. 6, r. 4
- unnecessary matter in— Or. 6, r. 16
- verification of— Or. 6, r. 15
- wilful default—particulars of— Or. 6, r. 4

POSSESSION (OF IMMOVEABLE PROPERTY)—
- decree for possession and for rents and mesne profits— Or. 20, r. 12
- immediate delivery of—order for—of certain lands— Or. 37, r. 9

**Delivery of—to holder of decree for possession—**
- application—fresh— Or. 21, r. 94
- actual—where decree is for exclusive possession— Or. 21, r. 33 (1)
- building—of—and breaking open of door— Or. 21, r. 33 (3)
- symbolical—where decree is for joint possession— Or. 21, r. 33 (2)
- ——where property is in tenant's occupation— Or. 21, r. 34

**Delivery of—to purchaser in execution—**
- actual—where property is in occupation of judgment-debtor— Or. 21, r. 92
- symbolical—where property is in tenant's occupation— Or. 21, r. 93

**Dispossession—**
- of person claiming to be in possession on his own account— Or. 21, rr. 97-98
- of transferee *pendente lite* from judgment-debtor— Or. 21, r. 99
- regular suit to establish right of possession— Or. 21, r. 100

POSSESSION (OF IMMOVEABLE PROPERTY.—(*Concld.*)

**Resistence to delivery of—**

occasioned by—judgment debtor— Or. 21, r. 95

——person claiming in good faith to be in possession— Or. 21, r. 96

——transferee *pendente lite* from judgment-debtor— Or. 21, r. 99

resistence or obstruction to possession—complaint on— Or. 21, r. 94

POST—

corporations—service of summons by post in suits by or against— Or. 29, r. 2 (b)

letter substituted for summons—sending by post of— Or. 5, r. 30

service of summons by,— Or. 5, r. 25

POSTAGE—

payment of—chargeable on notice —summons, etc.— S. 107

POSTPONEMENT—*See* Adjournment.

of sale of immoveable property for raising amount of decree— Or. 21, r. 80 (1)

——pending inquiry into claim or objection— Or. 21, r. 56 (2)

payment of amount of decree—postponement of—Or. 20, r. 11 (1)

POWERS—

inherent powers of Courts— S. 115

of appellate Court— S. 85, Or. 40, r. 32

of arbitrators— Or. 39, r. 6

of umpires— Or. 39, r. 6

POWER OF ATTORNEY—

recognised agents—and— Or. 3, r. 2

PRAYER—

and relief claimed in plaint— Or. 7, r. 7

PRECEPT—

attachment under— S. 39

PRE-EMPTION—

decree in suit for— Or. 20, r. 14

sale of share in immovable property and bid of co-sharer— Or. 21, r. 85

——moveable property and bid of co-sharer— Or. 21, r. 74 (3)

PRELIMINARY DECREE—

appeal from,— S. 77

—— from—if not preferred—effect of— S. 77

definition of,— S. 2 (2) Expln.

in suit for accounts between principal and agent—Or. 20, r. 16

——administration— Or. 20, r. 13

——dissolution of partnership— Or. 20, r. 15

——partition— Or. 20, r. 18

——possession and mesne profits— Or. 20, r. 12

PRESCRIBED—

definition of,— S. 2 (15)

PRESUMPTION—

of law—and pleadings— Or. 6, r. 13

PRICE—

deficiency of—on re-sale— Or. 21, r. 68

PRINCIPAL—

decree in suit for account between principal and agent— Or. 20, r. 16

PRIVATE RIGHTS—

*res judicata*—and litigation for—in common with others— S. 10, Expln. VI

PRIVILEGE—

arrest—privilege from— S. 100

inspection by Court when privilege claimed— Or. 11, r. 19 (2)

PROBATE—

executor—who has not joined in probate need not be made party— Or. 31, r. 2

PROCEDURE—

adjourned hearing—where parties fail to appear at— Or. 17, r. 2

appeals from orders—procedure in— S. 86 Or. 42, r. 2

defendant only appearing at hearing— Or. 9, r. 8

—— refusing to accept service— Or. 5, r. 17

execution —on receiving application for— Or. 21, r. 15

interrogatories — omission to answer— Or. 11, r. 11

issue— where parties are at— Or. 15, r. 3

Judge vacating office before signing decree— Or. 20, r. 8

judgment-debtor—on appearance of—upon notice or after arrest— Or. 21, r. 38

jurisdiction—for arrest or attachment outside—not in execution— S. 101

lunatics —in suits by or against— Or. 32, r. 15

minors —in suits by or against— Or. 32

miscellaneous proceedings in— S. 105

neither party appearing— Or. 9, r. 3

non-attendance of one of several defendants—in case of— Or. 9, r. 11

——plaintiffs—in case of— Or. 9, r. 10

notice for execution against legal representative — after issue of— Or. 21, r. 21

pauper—at hearing of application for leave to sue as— Or. 33, r. 7

PROCEDURE.-(*Concld.*)

payment into Court—acceptance of—by plaintiff— Or. 24, r. 4

plaint—on admitting— Or. 7, r. 9

——rejecting— Or. 7, r. 12

——returning— Or. 7, r. 10 (2)

plaintiff only appears at hearing—where— Or. 9, r. 6

rules of—in Schedule I—effect of— S. 90

——powers of Courts to frame —*See* Rules.

second appeals—in— S. 86 Or. 41, r. 1

witness—failure of—to appear— Or. 16, rr. 10-13

——where insufficient sum paid in Court for expenses of— Or. 16, r. 4

written statement—when party fails to present—called for by Court— Or. 8, r. 10

PROCESS—*See* Summons: Warrant.

endorsement on process for execution— Or. 21, r. 23

execution—issue of process for— Or. 21, r. 22

in suits by or against Government— Or. 27, r. 3

return of—with endorsement—to Court— Or. 21, r. 23 (1)

service of—and expenses— Or. 46, r. 1

——on pleader— Or. 3, r. 5

——on recognised agent— Or. 3, r. 3

——on special agent to accept service— Or. 3, r. 6

witnesses—issue of process to—on application of commissioner— Or. 26, r. 17 (2)

PROCLAMATION—

of sale by public auction— Or. 21, r. 64

costs and interest not covered by proclamation—liability for— Or. 21, r. 86 (3)

PROCLAMATION.—(*Concld.*)
examination of persons to ascertain matters for proclamation— Or. 21, r. 64 (4)
matters to be specified in—Or. 21, r. 64 (2)
mode of making proclamation of sale— Or. 21, r. 65
resale in default of purchase money—and fresh proclamation— Or. 21, r. 84
sale—adjournment of—and fresh proclamation— Or. 21, r. 67 (2)
separate proclamations unnecessary where sale of property in lots— Or. 21, r. 65 (3)

In Other cases—
attachment of immoveable property—proclamation of order of— Or. 21, r. 52 (2)
tenant,—where property is in occupation of—
(*a*) and possession to go to holder of decree for possession— Or. 21, r. 34
(*b*) and possession is to be delivered to execution purchaser— Or. 21, r. 93
witness—proclamation requiring attendance of— Or. 16, r. 10 (2)

PRODUCTION—*See* Documents.

PROMISSORY NOTE—
*See* Negotiable instrument:
joinder of parties liable on same— Or. 1, r. 6

PROPERTY—*See* Moveable Property: Immoveable Property.
attachment—what property liable to— S. 52
injunction—temporary—when—in regard to property in dispute— Or. 37, r. 1
private transfer of—pending attachment in execution— S. 56

PUBLIC CHARITIES— Ss. 72—73

PUBLIC RELIGIOUS TRUSTS—
*See* Public Charities.

PUBLIC NUISANCE— S. 71

PUBLIC OFFICER—
attachment — allowances (being less than salary) of—not liable to— S. 52 (1)
——of property in custody of— Or. 21, r. 50
——of salary of— S. 52 (1)
—————— mode of— Or. 21, r. 46
definition of — S. 2 (16)
execution—salary of public officer and jurisdiction in— Or. 21, r. 46
exemption from mesne arrest— S. 66 (*a*) Or. 27, r. 8
——mesne attachment of property of— S. 66 (*a*) Or. 27, r. 8
——personal appearance in certain cases... S. 66 (*b*)
extension of time to enable—to make reference to Government— Or. 27, r. 7
Government undertaking defence of suit against— Or. 27, r. 8
jurisdiction in execution proceedings against— Or. 21, r. 46
notice before suit— S. 65
procedure in suit against— Or. 27, r. 8
stay of execution—no security from public officer on— Or. 40, r. 7
suits by or against— Or. 27

PUBLIC RIGHTS..
*res judicata*—litigation for and public rights— S. 10, Expln. VI

PURCHASER—*See* Auction purchaser.

PURDA LADIES—
arrest of—in execution of civil process in certain cases,— S. 97 (2)

PURDA LADIES.—(*Concld.*)
arrest of person in a room in occupation of— S. 47 (1)
delivery of possession when property in occupation of— Or. 21, r. 38 (3)
exemption from personal appearance in Court— S. 97

QUESTIONS—
Court executing decree—questions relating to execution are for— S. 40
of law,—in second appeal— S. 79

RATEABLE DISTRIBUTION— S. 59

RECEIVER—
account—liability of receiver to— Or. 38, r. 3 (*b*)
appeal from order granting or rejecting an application to appoint a receiver— Or. 42, r. 1, (22)
appointment of—in execution proceedings— S. 44 (*d*)
——in other cases— S. 74 (*d*) Or. 38, r. 1
attachment of property of receiver in enforcement of his duties— Or. 38, r. 4
Division Peishkar—when may be appointed— Or. 38, r. 5
duties of— Or. 38, r. 3
enforcement of receiver's duties—mode of— Or. 38, r. 4
loss occasioned by default of— Or. 38, r. 3 (*d*)
partner's share—of—where it is attached— Or. 21, r. 47 (2)
powers of— Or. 38, r. 1 (*d*)
remuneration of— Or. 38, r. 2
security—furnishing of—by— Or. 38, r. 3 (*a*)
——for costs by receiver on plaintiff's insolvency— Or. 22, r. 8

RECOGNIZED AGENT—*See* Agent.

RECORD—
power of Court to send for record of any suit or proceeding— Or. 13, r. 10

REDEMPTION—
place of suing—in suits for redemption— S. 15 (*c*)
possession—claim for—in suit for redemption— Or. 2, r. 4 proviso

REFERENCE—
application for reference to High Court— Or. 44, r. 1
Court trying suit or appeal—reference to High Court by— Or. 44, r. 1
costs of reference to High Court— Or. 44, r. 4
decree contingent upon decision of High Court—Court may pass— Or. 44, r. 2
execution of decree not allowed pending reference to High Court— Or. 44, r. 2
High Court—to—when lies— Or. 44, r. 1
opinion of High Court—power to refer case for— S. 87
powers of High Court on reference— Or. 44, r. 5
procedure after judgment of High Court— Or. 44, r. 3
stay proceedings—power of Court making reference to— Or. 44, r. 2
to arbitration—*See* Arbitration.

REGISTRATION—
documents—of—by judge or officer of Court— Or. 21, r. 32 (6)

REJECTION—
of appeal where security for costs not furnished within time— Or. 40, r. 10 (2)
of application for execution— Or. 21, r. 15 (1)

REJECTION.—(*Concld.*)
—for leave to sue as pauper— Or. 33, r. 5
of documents—irrelevant or inadmissible— Or. 13, r. 3
of memorandum of appeal— Or. 40, r. 3
of plaint— Or. 7, r. 11
—procedure on— Or. 7, r. 12
review—rejection of application for— Or. 45, r. 4 (1)
Or. 45, r. 6 (1)

RELATORS—
public charities—in suits for— S. 72
—nuisance—in suits for— S. 71

RELEASE—
of judgment-debtor from jail— Ss. 50, 51
release to be specifically pleaded— Or. 8, r. 2

RELIEF—
further or other—need not be claimed— Or. 7, r. 7
omission to sue for one of several reliefs— Or. 2, r. 2 (3)
plaint must state specifically relief claimed— Or. 7, r. 1
Or. 7, r. 7
rejection of plaint when relief claimed is undervalued— Or. 7, r. 11
*res judicata*—relief claimed in plaint but not granted and— S. 10, Expln. V
when founded upon separate grounds— Or. 7 r. 8

RELIGIOUS ENDOWMENTS REGULATION— S. 73

RELIGIOUS TRUSTS—
*See* Public Religious Trusts.

RELINQUISHMENT—
amount relinquished to be stated in plaint— Or. 7, r. 1 (*h*)
of portion of claim by plaintiff— Or. 2, r. 2 (2)

REMAND—
appeal from order of remand— S. 83 (2)
appellate Court—remand of case by— Or. 40, r. 22
irregularity or error not affecting merits or jurisdiction— S. 78
issues—remand by appellate Court for trial of— Or. 40, r. 24

REMOVAL—
of attachment after satisfaction of decree— Or. 21, r. 53
—before judgment when security furnished— Or. 36, r. 9
guardian *ad litem*—of— Or. 32, r. 11
next-friend—of— Or. 32, r. 9
—stay of proceedings on— Or. 32, r. 10 (1)
of person from possession or custody of property— Or. 38, r. 1 (*b*)
of trustee—in suit relating to public charities— S. 72 (1)

RENT—
attachment before amount of rent ascertained— Or. 21, r. 40
claim for arrears of—may be joined with suit for recovery of land— Or. 2, r. 4 (*a*)
decree for possession and for rent— Or. 20, r. 12
omission to sue for *portion* of arrears of— Or. 2, r. 2, Ill.
receiver — collection of rents by— Or. 38, r. 1 (*d*)

REPEAL—
continuance of orders under repealed enactments— S. 120
enactments repealed— S. 119
reference to Code of Civil Procedure and other repealed enactments— S. 121

REPRESENTATIVE — *See* Legal representative.
holder of decree to be executed by attachment of another decree— Or. 21, r. 51 (3)
proceedings by or against— S. 110

RESALE—
in default of deposit of 25 per cent. by purchaser— Or. 21, r. 81
in default of payment of purchase-money by purchaser— Or. 21, r. 83

RESIDE—
arrest of person residing outside jurisdiction in cases other than execution— S. 101
residence and appearance of party in person— Or. 5, r. 4
——attendance of witness in person— Or. 16, r. 19
security for costs in case of residence outside Travancore— Or. 25, r. 1

RES JUDICATA—
competence of Court not dependent on right of appeal— S. 10, Expln. II
foreign judgment and— S. 12
*See* Foreign judgment.
relief claimed but not expressly granted— S. 10, Expln. IV

RESISTANCE—
to delivery of possession in execution—*See* Possession.

RESPONDENT—
cross-objections by— Or. 40, r. 21
*See* Cross-objections.
power of appellate Court to—
(1) add person interested in result of appeal as— Or. 40, r. 19
(2) vary decree as regards all respondents— Or. 40, r. 32

RESTITUTION—*See* Restitution of conjugal rights.
application for— S. 108
of property—taken in execution—pending application for stay,— Or. 21, r. 24 (2)
surety for restitution of property taken in execution of decree— S. 109 (*b*)

RESTITUTION OF CONJUGAL RIGHTS—
discretion of Court in executing decree for— Or. 21, r. 31
execution of decree for— Or. 21, r. 30
periodical payments in execution of decree for— Or. 21, r. 31 (2)(3)
power of Court to vary order for periodical payments— Or. 21, r. 31 (3)

RETIREMENT—
guardian *ad litem*—of— Or. 32, r. 11
next-friend—of— Or. 32, r. 8
——stay of proceedings on— Or. 32, r. 10 (1)

RE-TRANSFER—
of suit—appeal or other proceeding from one Court to another— S. 23

RETURN—
memorandum of appeal—of— Or. 40, r. 3
plaint—of—to be presented to proper Court— Or. 7, r. 10

REVIEW—
appeal—from order granting application for review — Or. 45, r. 7
——of one party, and application for review by another— Or. 45, r. 1 (2)
application for— Or. 45, r. 1
——form of— Or. 45, r. 3
——hearing of— Or. 45, r. 5
——to whom to be made— Or. 45, r. 1

REVIEW.—(*Concld.*)
application for—when granted— Or. 45, r. 4 (2)
——when rejected— Or. 45, r. 4 (1)
bar of certain applications for review— Or. 45, r. 9
discovery of new and important matter, or evidence— Or. 45, r. 1
final decree—order granting application may be challenged in appeal from— Or. 45, r. 7 (1)
mistake or error apparent on face of record— Or. 45, r. 1
notice to opposite party on granting of application— Or. 45, r. 4 (2)
registry of application granted and order for re-hearing— Or. 45, r. 8
re-hearing of case—order for— Or. 45, r. 8

REVISION—
High Court—powers and functions of—as to— S. 89

RIGHT TO SUE—
*See* Abatement.

RIGHT TO BEGIN—
appeal—at hearing of— Or. 40, r. 15
suit—at hearing of— Or. 18, r. 1
where burden of proving some of the issues lies on the other side— Or. 18, r. 3

RULES—
definition of,— S. 2 (17)
effect of Rules— S. 90
High Court—power of—to make Rules— S. 91
matters for which Rules may provide— S. 96
publication of Rules— S. 95 (2)
Rules subject to sanction of Government— S. 95 (1)

RULE COMMITTEE—
constitution of— S. 92
functions of— S. 93
Rules to be laid before Legislative Council— S. 94

SALE—
exemption from—of certain property— S. 52 (1) proviso.
immediate sale of moveable property subject to speedy decay— Or. 37, r. 6
partner's interest in property—sale of—in execution— Or. 21, r. 47 (2)
rateable distribution of proceeds of sale in execution— S. 59
witness—sale of property of defaulting— Or. 16, r. 12

(1) **Of property under attachment—generally—**
adjournment and stoppage of sale— Or. 21, r. 67
attached property—power of Court to order sale of— Or. 21, r. 62
attachment before judgment no bar to applying for sale— Or. 36, r. 10
conduct of sale of attached property— Or. 21, r. 63
decree-holder not to bid for or buy property without leave of Court— Or. 21, r. 69
leave to bid—to decree-holder— Or. 21, r. 69
officers not to bid for or purchase— Or. 21, r. 70
postponement of sale pending investigation of claims or objections— Or. 21, r. 56 (2)
proclamation of sale— Or. 21, r. 64
——mode of making— Or. 21, r. 65
resale—defaulting purchaser answerable for loss on— Or. 21, r. 68
sale of attached property—power of Court to order— Or. 21, r. 62
time of sale— Or. 21, r. 66

SALE.—(*Contd.*)

**(2) Of Moveable property under attachment—**

agricultural produce—sale of— Or. 21, r. 71

bid of co-owner to have preference— Or. 21, r. 74 (3)

delivery of moveable property, debts and shares— Or. 21, r. 76

growing crops—special provisions relating to— Or. 21, r. 72

immediate sale of moveable property subject to decay—

(1) where it is property attached before judgment— Or. 37, r. 6

(2) where it is property attached in execution—Or. 21, r. 41 proviso.

irregularity not to vitiate sale, but person injured may sue— Or. 21, r. 75

negotiable instruments—sale of— Or. 21, r. 73

——transfer of— Or. 21, r. 77

public auction and payment of purchase money— Or. 21, r. 74 (1)

sale—when becomes absolute— Or. 21, r. 74 (2)

shares in a corporation—sale of— Or. 21, r. 73

——transfer of— Or. 21, r. 77

vesting order in case of moveable property not specially mentioned— Or. 21, r. 78

**(3) Of Immoveable property under attachment—**

absolute,—sale when to become— Or. 21, r. 89

appeal from order—setting aside or refusing to set aside sale— Or. 42, r. 1

SALE —(*Contd.*)

bid of co-owner to have preference— Or. 21, r. 85

confirmation of sale— Or. 21, r. 89

Courts by which sales of immoveable property may be ordered— Or. 21, r. 79

deposit by purchaser— Or. 21, r. 81

——of decretal amount, and setting aside of sale— Or. 21, r. 86

fraud in publishing or conducting sale — setting aside for — Or. 21, r. 87

fresh proclamation on re-sale in default of payment in time— Or. 21, r. 84

irregularity in publishing or conducting sale—effect of— Or. 21, r. 87

order confirming or setting aside sale— Or. 21, r. 89

postponement of sale for judgment-debtor to raise decretal amount— Or. 21, r. 80

resale on default in payment of deposit by purchaser— Or. 21, r. 81

——in payment of purchase-money— Or. 21, r. 83

return of purchase-money when sale set aside— Or. 21, r. 93

sale—when set aside on deposit— Or. 21, r. 86

——when set aside on ground of irregularity or fraud— Or. 21, r. 87

——when set aside for absence of saleable interest— Or. 21, r. 88

——when to become absolute— Or. 21, r. 89 (1)

——when to be set aside,— Or. 21, r. 89 (2)

saleable interest — when judgment-debtor has none— Or. 21, r. 88

SALE.—(Concld.)

substantial injury—and setting aside of sale— Or. 21, r. 87

stay of sale—pending appeal— Or. 40, r. 6 (2)

time for payment in full of purchase-money— Or. 21, r. 82

**(4) Purchaser's title and his rights—**

*See* Auction purchaser.

delivery of property in occupancy of judgment-debtor— Or. 21, r. 92

——of tenants,— Or. 21, r. 93

sale-certificate— Or. 21, r. 91

vesting of property sold in purchaser—date of— S. 57

SALE CERTIFICATE—*See* Certificate.

SALE PROCEEDS—

rateable distribution of— S. 59

SALEABLE INTEREST—

absence of—and setting aside of sale— Or. 21, r. 88

return of purchase money when no saleable interest—Or. 21, r. 90

SALEABLE PROPERTY— S. 52

SALVAGE—

assessors in case of— S. 104

SATISFACTION—

attachment—removal of—after satisfaction of decree— Or. 21, r. 53

costs where deposit accepted in part or full satisfaction of debt— Or. 24, r. 4

cross-claims—in case of—under same decree— Or. 21, r. 17

cross-decrees—in case of— Or. 21, r. 16

decree—of—out of Court— Or. 21, r. 2

deposit by defendant in Court of amount in satisfaction of claim— Or. 24, r. 1

SATISFACTION.—(Concld.)

question as to satisfaction of decree is for Court executing decree— S. 40

SCANDALOUS—

interrogatories — objection to scandalous— Or. 11, r. 6

pleadings and striking out scandalous matter— Or. 6, r. 16

SCHEME—

public or religious charities—settling scheme in suits relating to— S. 72

SECOND APPEAL—

fact—undetermined issues of—when may be determined in second appeal— S. 81

law—where decision is contrary to— and— S. 79

——issue of—when not determined—and— S. 79

order made in appeal from orders,—does not lie from— S. 82 (2)

procedure in second appeal— S. 86, Or. 41, r. 1

procedure—substantial error or defect in—and— S. 79

rules relating to first appeal to apply to second appeals—Or. 41, r. 1

sections relating to first appeals to apply to second appeals— S. 86

substantial error or defect in procedure—and— S. 79

usage having the force of law—and— S. 79

when second appeal will lie— S. 79

SECURITY—

**(1) For costs of suit—**

assignee—failure of — to give security— Or. 22, r. 8 (2)

failure to furnish—effect of— Or. 25, r. 2

SECURITY.—(*Contd.*)

**(1) For costs of suit.—(*Concld.*)**

insolvency of plaintiff—on— Or. 22, r. 8

next friend—retiring—to give security for costs already incurred— Or. 32, r. 8 (1)

plaintiff—when taken from— Or. 25, r. 1

——insolvency of—and security for costs— Or. 22, r. 8 (2)

Travancore—residence outside—and— Or. 25, r. 1

**(2) For costs of appeal—**

consequence of not furnishing— Or. 40, r. 10 (2)

may be costs of appeal, or of original suit, or both— Or. 40, r. 10

**(3) where execution is either stayed or allowed—**

appellant—security from—where execution stayed pending appeal— Or. 40, r. 5

respondent—security from—where execution allowed pending appeal— Or. 40, r. 6

**(4) In other cases—**

attachment before judgment—removal of—on furnishing of security— Or. 36, r. 9

defendant—from—for appearance— S. 74 (a) Or. 36, rr. 1, 2

——for production of property— Or. 36, r. 5 S. 74 (b)

Dewan of Travancore—security shall not be required from— Or. 40, r. 7

failure to furnish security for appearance—effect of— Or. 36, r. 4

guardian *ad litem*—when security required from— Or. 32, r. 6

judgment-debtor—when security required from— Or. 21, r. 24 (3)

SECURITY.—(*Concld.*)

**(4) In other cases.—(*Concld.*)**

next-friend—when security required from— Or. 32, r. 6

public officer—when security could not be required from— Or. 40, r. 7

receiver—security from— Or. 38, r. 3 (a)

witness—security from—for his attendance— Or. 16, r. 16 (2)

SERVICE—

dismissal of suit where plaintiff after summons returned unserved fails for one year to apply for fresh summons— Or. 9, r. 5

——when plaintiff fails to pay for service— Or. 9, r. 2

of foreign summons— S. 26

of orders, notices and other documents— Or. 46, r. 2

of process issued under the Code— Or. 46, r. 1

——on pleader— Or. 3, r. 5

——on recognised agent— Or. 3, r. 3

——on special agent to accept service— Or. 3, r. 6

on corporation— Or. 29, r. 2

—firm— Or. 30, r. 3

—persons authorised by military men to sue or defend for them— Or. 28, r. 3

**(1) of summons on defendant.**

acknowledgment—person served to sign— Or. 5, r. 16

adult male member of defendant's family—service on— Or. 5, r. 15

agent by whom defendant carries on business, service on— Or. 5, r. 13

——in charge—service on—in suits for immoveable property— Or. 5, r. 14

SERVICE.—(*Contd.*)

**(1) of summons on defendant.—** (*Concld.*)

agent empowered to accept service— Or. 5, r. 12
defendant refuses service or cannot be found—procedure when— Or. 5, r. 17
——in person—service to be on—when practicable— Or. 5, r. 12
——in prison—service on— Or. 5, r. 23
——keeping out of way for purpose of avoiding service— Or. 5, r. 20
——residing out of Travancore— Or. 5, r. 24
——residing within jurisdiction of another Court—where— Or. 5, r. 21
delivery of summons for service where defendant within jurisdiction— Or. 5, r. 9
duty of Court to which summons is sent for service— Or. 5, r. 22
——of persons to whom summons is delivered or sent for service— Or. 5, r. 27
endorsement of time and manner of service— Or. 5, r. 18
examination of serving officer— Or. 5, r. 19
letter—substitution of—for summons— Or. 5, r. 28
master of a ship—service on— Or. 5, r. 13 (2)
mode of service on defendant within jurisdiction— Or. 5, r. 10
public officer—service on— Or. 5, r. 25
return of summons where from any cause service is impossible— Or. 5, r. 27 (2)
servant is not a member of family for purposes of service— Or. 5, r. 15, Expln.
several defendants—service on— Or. 5, r. 11
soldiers—service on— Or. 5, r. 26; Or. 28, r. 3
substituted service— Or. 5, r. 20

SERVICE.—(*Concld.*)

**(2) of summons on witness.**

time for serving summons— Or. 16, r. 9
to be made in same manner as summons to a defendant— Or. 16, r. 8

SET-OFF—

amount claimed as,—to be legally recoverable— Or. 8, r. 6
appeal from decree relating to set-off— Or. 20, r. 19 (2)
costs to be set-off—Court may direct— Or. 20, r. 6 (3)
cross-decrees—when—may be set-off against each other— Or. 21, r. 16
decree—when set-off is allowed— Or. 20, r. 19 (1)
decree-holder purchaser—right of—to set-off purchase-money— Or. 21, r. 69 (2)
effect of set-off— Or. 8, r. 6 (2)
jurisdiction—pecuniary limits of—not to exceed— Or. 8, r. 6
lien of pleader for costs—where set-off is claimed— Or. 8, r. 6 (2)
new grounds of defence arising after claiming a set-off— Or. 8, r. 8
particulars of,—to be given in written statement— Or 8, r. 6
pecuniary limits of Court—amount of set-off not to exceed— Or. 8, r. 6 (1)
plaintiff—set-off allowed by—to be mentioned in plaint— Or. 7, r. 1
set-off founded on separate grounds— Or. 8, r. 7
when set-off may be claimed— Or. 8, r. 6
written statement in answer to a claim of set-off— Or. 8, r. 6 (3)

SHARE—

*See* Shares in a Corporation: Co-sharer.
attachment of a share in moveables— Or. 21, r. 45

SHARE.—(*Concld.*)

sale of share and bid of co-sharer— Or. 21, r. 74
Or. 21, r. 85

execution—share in immoveable property how delivered in— Or. 21, r. 33

SHARES IN A CORPORATION—

attachment—liable to— S. 52

——mode of— Or. 21, r. 44 (1)

delivery of—in execution— Or. 21, r. 76 (3)

definition of,— S. 2 (18)

sale of—in execution— Or. 21, r. 73

transfer of—in execution— Or. 21, r. 77

SHOP-BOOK—

evidence—receiving in—copies of entries in— Or. 18, r. 5

production of— Or. 7, r. 17

SIGNED—

award to be signed and filed— Or. 39, r. 10

definition of,— S. 2 (19)

execution — application for—by whom to be signed— Or. 21, r. 9 (2)

judgments to be dated and signed— Or. 20, r. 3

pleadings by whom to be signed in ordinary cases— Or. 6, r. 14

——suits by or against Corporation— Or. 29, r. 1

——suits by or against Government— Or. 27, r. 1

——suits by or against firms— Or. 30, r. 1

summons—by whom to be signed— Or. 5, r. 1 (3)

SPECIAL APPEAL—

*See* Second appeal.

SPECIAL CASE—

agreement to state case for Court's opinion and procedure thereon— Or. 35, rr. 1-5

SPECIAL CASE.—(*Concld.*)

agreement to be filed and registered as suit— Or. 35, r. 3

arbitrator or umpire statement of—by— Or. 39, r. 11

opinion of Court—power to state case for— Or. 35, r. 1

value of subject-matter to be stated in certain cases— Or. 35, r. 2

SPECIFIC PERFORMANCE—

mode (ordinary) of enforcing decree for— Or. 21, r. 29

STAMP—

deficiency of Court-fees,—power to make up— S. 113

plaint — where — insufficiently stamped— Or. 7, r. 11 (*c*)

STAY—

appeal does not operate as stay of proceedings under decree— Or. 40, r. 5 (1)

arbitration—stay of suit where there is an agreement to refer to— Or. 39, r. 18

interpleader suit—stay of suit brought against plaintiff in— Or. 34, r. 3

next-friend—stay of proceedings on removal, etc., of— Or. 32, r. 10 (1)

of suit pending disposal of previously instituted suit— S. 9

——where there is an agreement to refer to arbitration— Or. 39, r. 18

——in firm name where names of partners not disclosed— Or. 30, r. 2 (2)

partnership firm—stay of suit brought in name of— Or. 30, r. 2 (2)

reference to High Court—stay of proceedings on— Or. 44, r. 2

STAY.—(*Concld.*)

**Stay of execution—**

by Appellate Court— Or. 40, r. 5

by Court to which decree is sent for execution— Or. 21, r. 24

execution—stay of—

(1) before appeal is preferred—or pending— Or. 40, r. 5

(2) by Court to which decree is sent for execution— Or. 21, rr. 24-26

(3) pending suit between decree-holder and judgment-debtor— Or. 21, r. 27

immoveable property—stay of sale of—pending appeal— Or. 40, r. 6 (2)

security for restitution where stay refused— Or. 40, r. 6 (1)

——where order made for stay of execution— Or. 40, r. 5 (3) (*c*)

STIPENDS—

allowed to Government pensioners—attachment of— S. 52 (1)

STRIKING OUT—

execution proceedings—effect of— Or. 21, r. 55

interrogatories—when prolix, oppressive, unnecessary or scandalous— Or. 11, r. 7

issues— Or. 14, r. 5 (2)

names of parties— Or. 1, r. 10 (2)

pleadings (unnecessary, scandalous or embarrassing)—Or. 6, r. 16

SUBSISTENCE ALLOWANCE—

arrest—to be paid into Court before— Or. 21, r. 37 (1)

costs in the suit—to be— Or. 21, r. 37 (5)

further monthly payments to be made in advance—Or. 21, r. 37 (3)

judgment-debtor to be released if subsistence allowance not paid— S. 50 (1) (iv)

scales of— S. 49

SUBSTITUTED SERVICE—

when and how allowed— Or. 5, r. 20

SUBSTITUTION—

of plaintiff— Or. 1, r. 10

SUITS—*See* Place of suing: Court: Dismissal of suit.

abatement of— Or. 22

attached property—to establish right to— Or. 21, r. 61

bar of suits which are not of a civil nature— S. 7

certified purchaser—against—on ground of— S. 58 (2)

civil nature—suits to be of a— S. 7

conduct of— Or. 1, r. 11

co-partners—between— Or. 30, r. 9

Government of His Majesty the King Emperor—by or against—to be instituted by or against Secretary of State— S. 66-A

Indian Prince—suits by or against— S. 66-B

immoveable property,—for recovery of— Or. 7, r. 3

instituted—how— S. 24
Or. 4, r. 1

interpleader suits— S. 68

lunatics—by or against—procedure in— Or. 32, r. 15

mesne profits for— Or. 7, r. 2

minor plaintiff or co-plaintiff on majority—may repudiate suit— Or. 32, rr. 13, 14

money—for recovery of— Or. 7, r. 2

negotiable instrument—on lost— Or. 7, r. 16

no fresh suit when suit abates or is dismissed under Or. 22— Or. 22, r. 9

person carrying on business in name not his own—suit against— Or. 30, r. 10

possession of property—to establish right to— Or. 21, r. 100

SUITS.—(*Contd.*)

public charities or nuisance relating to—*See* Public Charities: Public Nuisance.

register of— Or. 4, r. 2

representative character—by plaintiff in a— Or. 7, r. 4

stay of certain suits— S. 9

transfer of—*See* Transfer of suits.

trust property—*See* Public Charities.

withdrawal of—by plaintiff— Or. 23, r. 1

**(1) Disposal of suit at first hearing—**

defendants—where all or one of several—not at issue with plaintiff— Or. 15, rr. 1, 2

evidence—failure to produce—at first hearing— Or. 15, r. 4

parties at issue—where— Or. 15, r. 3

**(2) Frame of suit—**

arrears of rent—joinder of claim for—with claim for land— Or. 2, r. 4 (*a*)

claims—relinquishment of part of— Or. 2, r. 2 (2)

——successive—arising under same obligation—Or. 2, r. 2, Expln.

——suit to include whole claim— Or. 2, r. 2 (1)

foreclosure—suit for—and joinder of claim for possession— Or. 2, r. 4

joinder of causes of action— Or. 2, r. 3

——of claims by or against executor, administrator or heir— Or. 2, r. 5

jurisdiction where several causes of action are united— Or. 2, r. 3 (2)

land—suit for recovery of—and joinder of claims— Or. 2, r. 4

leave of Court and omission to sue for some reliefs— Or. 2, r. 2

SUITS.—(*Concld.*)

**(2) Frame of suit.—(*Concld.*)**

mesne profits—joinder of claim for—with suit for land— Or. 2, r. 4 (*a*)

misjoinder—*See* Misjoinder.

multifariousness—*See* Multifariousness.

omission to sue for one of several reliefs— Or. 2, r. 2 (3)

redemption—suit for—and joinder of claim for possession— Or. 2, r. 4

separate trials of causes of action— Or. 2, r. 6

**(3) Special suits—**

corporations—by or against— Or. 29
*See* Corporation.

firms—by or against— Or. 30
*See* Firm: Partners.

Government and Public officers—by or against— Ss. 64-67, Or. 27
*See* Government: Public Officer.

Interpleader suits— Or. 34
*See* Interpleader.

military men—by or against— Or. 28
*See* Military men.

minors and persons of unsound mind—by or against— Or. 32
*See* Minors: Lunatics.

paupers—by— Or. 33
*See* pauper.

public charities—relating to— S. 72
*See* Public Charities.

——nuisance—relating to— S. 71
*See* Public Nuisance.

trustees' executors, and administrators—by or against— Or. 31
*See* Trustees: Executors.

SUMMONS—*See* Service: Witness.

SUMMONS,—(*Contd.*)

**Summons to defendant to appear and answer claim—**

amended copy—of,—to be served on newly added defendant— Or. 1, r. 10 (4)
appearance of defendant— Or. 5, r. 1 (2)
copy of plaint or concise statement to accompany summons— Or. 5, r. 2
day for appearance of defendant—how fixed— Or. 5, r. 6
——to be specified— Or. 5, r. 1
dismissal of suit where plaintiff after summons returned unserved fails to apply for fresh summons for one year— Or. 9, r. 5
documents relied on by defendant—order on defendant to produce— Or. 5, r. 7
duty of persons to whom summons is delivered or sent for service— Or. 5, r. 27
expense of serving summons— Or. 46, r. 1
foreign—service of— S. 26
issue of— Or. 5, r. 1
letter—substitution of— Or. 5, r. 28
non-appealable cases—in—to be for final disposal—only— Or. 5, r. 5, proviso.
option to defendant to appear in person or by pleader— Or. 5, r. 1 (2)
penalty for default of compliance with— S. 29
personal appearance of parties—when can or cannot be ordered— Or. 5, rr. 3, 4
return of—when from any cause service is impossible— Or. 5, r. 27 (2)
settlement of issues or final disposal—summons to be for— Or. 5, r. 5
witnesses—direction to defendant to produce his— Or. 5, r. 8

SUMMONS.—(*Concld.*)

**Summons to witness**—*See* Witness.

arbitrator—summoning of witnesses before— Or. 39, r. 7
attendance—to specify time place and purpose of— Or. 16, r. 5
Court—power of—to summon strangers to suit as witnesses— Or. 16, r. 14
documents—summons to produce— Or. 16, r. 1
documents only—summons to produce— Or. 16, r. 6
evidence—summons to give— Or. 16, r. 1
mode of service of— Or. 16, r. 8
parties—provisions as to witness to apply to— Or. 16, r. 21
personal attendance of witness—when cannot be required— Or. 16, r. 19
power of Court to issue summons to witness— S. 27 (*b*)
——to require person present in Court to give evidence— Or. 16, r. 7
procedure where witness fails to comply with summons— Or. 16, rr. 10-13
service of— Or. 16, r. 8
time for serving— Or. 16, r. 9

SURETY—

decree—surety for performance of— S. 109 (*a*)
discharge of surety for appearance of defendant— Or. 36, r. 3
enforcement of liability of surety— S. 109
fulfilment of condition imposed on a person by Court—surety for— S. 109 (*c*)
notice to surety— S. 109, proviso.
payment of money under order of Court—surety for— S. 109 (*c*)
restitution of property taken in execution of decree—surety for— S. 109 (*b*)

TENANT—

delivery of property in occupancy of—
(1) to holder of decree for possession— Or. 21, r. 34
(2) to execution purchaser— Or. 21, r. 95
interpleader suit — when tenant may institute— Or. 34, r. 5

TENDER—

of expenses to witness— Or. 16, r. 3

TIME—

act prescribed or allowed by Code—extension of time for doing— S. 112
amendment of pleadings —for— Or. 6, r. 18
appearance of defendant—for—to be specified in summons— Or. 5, r. 1 (1)
——when service substituted— Or. 5, r. 20 (3)
award—extension of time for making— Or. 39, r. 8
Dewan of Travancore or public officer,—for satisfaction of decree against— S. 67
execution—limit of time for— S. 41
——time for sale in— Or. 21, r. 66
extension of— S. 112
inspection—time for—when notice given— Or. 11, r. 17
interrogatories,—time for filing affidavit in answer to— Or. 11, r. 8
—within which application lies to set aside— Or. 11, r. 7
power of Court to enlarge time— S. 112
purchase-money—time for payment of— Or. 21, r. 82
respondent—for appearance of—in appeal— Or. 40, r. 11 (2)
summons served—but not in due time— Or. 9, r. 6 (1) (c)

TIME.—(Concld.)

witness—for attendance of —to be specified in summons— Or. 16, r. 5
——for serving summons on— Or. 16, r. 9

TITLES OF SUITS— P. 960

TORT

immoveable property—tort in respect of—and place of suing— S. 15 (e)
moveables—tort in respect of—and place of suing— S. 18
person—tort in respect of —and place of suing— S. 18

TRANSFER OF BUSINESS—

of one Court to another— S. 114

TRANSFER OF DECREE FOR EXECUTION—

attachment under precept—how long to continue— S. 39, proviso.
British India—execution in Travancore of decrees of Civil Courts in— Ss. 38-A, 67-A, 67-B
Court passing decree—power of—to send it to subordinate Court— S. 36 (2)
——to which decree is sent to certify result of proceedings— S. 37
decree,—when — may be transferred for execution— S. 36
——filing of—by Court to which it is transferred—without proof— Or. 21, r. 6
documents—Courts receiving—to file same without proof— Or. 21, r. 6
——to be sent to Court to which decree is transferred— Or. 21, r. 5
execution by Court to which decree is transferred— Or. 21, r. 7
Indian States—execution in Travancore of decrees of Courts in— Ss. 38-A, 67-A, 67-B

TRANSFER OF DECREE FOR EXECUTION.—(*Concld.*)
- jurisdiction of Court—passing decree—proof of— Or. 21, r. 6
- mode of transfer— Or. 21, r. 4
- powers of Court in executing transferred decree— S. 38
- precepts— S. 39

TRANSFER OF SUITS—
- District Court—power of—as to transfer— S. 23
- High Court—general power of—respecting transfer and withdrawal— S. 23
- re-transfer of suits and appeals— S. 23
- transfer of suits which may be filed in more than one Court— S. 21

TRANSFEREE OF DECREE—
- application for execution by—Or. 11, r. 14
- equities of judgment-debtor—transfer subject to— S. 42

TRUSTS (PUBLIC, RELIGIOUS OR CHARITABLE)—
- suit for administration of— S. 72
- breach of,— S. 72

TRUSTEE—
- appointment of—in suits relating to public charities— S. 72
- attachment—property held in trust for judgment-debtor liable to— S. 52 (1)
- beneficiaries—when may be added as parties— Or. 31, r. 1
- deposit in Court—order for—of moneys, etc.,—held as trustee— Or. 37, r. 10
- husband of married trustee need not join in suit by or against her— Or. 31, r. 3
- parties when there are several trustees—all to be made— Or. 31, r. 2

TRUSTEE.—(*Concld.*)
- removal of—in suits relating to public charities— S. 72
- suit by or against— Or. 31
- vesting of trust property in— S. 72

TRUST PROPERTY—
- authorizing sale, etc.,—of—in suits relating to public charities— S. 72 (1)
- declaring allocation of—to any particular object of trust— S. 72 (1)
- vesting of—in trustees of a public charity— S. 72

UMPIRE—*See* Arbitration.
- appointment of— Or. 39, r. 4 (1) (*a*)
- ——of new— Or. 39, r. 5
- corruption or misconduct of— Or. 39, r. 15 (1) (*a*)
- death of— Or. 39, r. 5 (*b*) (i)
- leaving Travancore— Or. 39, r. 5 (*b*) (iii)
- notice for appointment of new— Or. 39, r. 5
- statement of special case by— Or. 39, r. 11
- umpire—when—may arbitrate— Or. 39, r. 9

UNDUE INFLUENCE—
- particulars of—to be stated in pleadings— Or. 6, r. 4

UNSOUND MIND—
- plaint—statement in—where party is of unsound mind— Or. 7, r. 1 (*d*)
- suits by or against persons of— Or. 32, r. 15
- *See* Lunatics.

USAGE—
- having the force of law and second appeal— S. 79 (1)
- ——and reference to High Court— Or. 45, r. 1
- ——and pauper appeal— Or. 43, r. 1

VALUATION OF SUITS—
plaint—statement in—of value of subject-matter of suit— Or. 7, r. 1 (i)
rejection of plaint where relief claimed is undervalued— Or. 7, r. 11 (b)
special case for Court's opinion—and valuation— Or. 35, r. 2

VERIFICATION—
application for execution —of— Or. 21, r. 11 (2)
——leave to sue as pauper —of— Or. 33, r. 2
——order for sale—of— Or. 21, r. 64 (3)
pleadings in general—of— Or. 6, r. 15
——in suits against Government—of— Or. 27, r. 1
——in suits by or against corporations—of— Or. 29, r. 1
——firm—of— Or. 30, r. 1 (2)

VESTING—
of property in trustees of a public charity— S. 72
of property in purchaser of moveable property at a Court-sale— Or. 21, r. 78

WAIVER—
objection as to misjoinder and non-joinder—waiver of— Or. 1, r. 13

WARRANT—
arrest of defendant before judgment— S. 74 (a) Or. 36, r. 1
——outside jurisdiction in cases other than execution of decrees— S. 101
arrest or attachment in execution—for— Or. 21, r. 22
endorsement on— Or. 21, r. 25
warrant for arrest to direct judgment-debtor to be brought up— Or. 21, r. 36

WARRANT.—(*Concld.*)
witness—for arrest of defaulting— Or. 16, r. 10 (3)

WILL—*See* Executors.
executors who have not proved—not necessary parties— Or. 31, r. 2

WITHDRAWAL—
cross-objections—effect of withdrawal of appeal on— Or. 40, r. 21 (4)
formal defect—and leave to withdraw suit— Or. 23, r. 1
leave—withdrawal of suit without— Or. 23, r. 1 (3)
limitation governing second suit after withdrawal of first suit— Or. 23, r. 2
of attachment before judgment— Or. 36, r. 6 (2)
of attachment on property of defaulting witness— Or. 16, r. 11
of suit—with liberty to bring a fresh suit— Or. 23, r. 1
of suit by one plaintiff without consent of others— Or. 23, r. 1 (4)
——pauper—and payment of Court-fees— Or. 33, r. 11

WITNESS—
arbitrator—summoning of witness before— Or. 39, r. 7
arrest—witness when exempt from— S. 100 (2)
commission to examine witnesses— Or. 26, rr. 1-8
commission — attendance and examination of witness before— Or. 26, r. 17 (1)
——issue of process to witness on application of— Or. 26, r. 17 (2)
penalty for default of compliance with summons— S. 29
power of Court to issue summons to witness— S. 27 (b)

WITNESS.—(*Contd.*)

summons to defendant to direct defendant to produce his witnesses— Or. 5, r. 8

**summoning and attendance of—**

appeal from order of attachment of property of witness— Or. 42, r. 1

—pronouncing judgment against party refusing to give evidence— Or. 42, r. 1

application for issue of summons—when may be made— Or. 16, r. 1

attachment of property of witness— Or. 16, r. 10 (3)

Court may summon stranger to suit as witness— Or. 16, r. 14

documents — where summons is for production of— Or. 16, r. 6

duty of persons summoned to give evidence— Or. 16, r. 15

examination of serving officer when witness fails to appear— Or. 16, r. 10 (1)

expenses of witness detained more than a day— Or. 16, r. 4 (2)

expenses—scale of— Or. 16, r. 2 (3)

——tender of—to witness— Or. 16, r. 3

insufficient sum paid in for expenses — procedure where— Or. 16, r. 4

power of Court to require persons present in Court to give evidence— Or. 16, r. 7

procedure when witness fails to appear— Or. 16, rr. 12, 13

——where witness apprehended cannot give evidence— Or. 16, r. 18

——fails to comply with summons— Or. 16, r. 10

WITNESS.—(*Concld.*)

**summoning and attendance of.—(*Concld.*)**

proclamation requiring witness to attend— Or. 16, r. 10 (2)

refusal to give evidence when required by Court—consequence of— Or. 16, r. 20

remuneration payable to experts— Or. 16, r. 2 (2)

rules as to witness to apply to parties summoned— Or. 16, r. 21

security for attendance from witness— Or. 16, r. 16 (2)

summons how served— Or. 16, r. 8

——may be to give evidence or produce documents— Or. 16, r. 1

time for serving summons— Or. 16, r. 9

time, place and purpose of attendance to be stated in summons— Or. 16, r. 5

travelling and other expenses of witness— Or. 16, r. 2

warrant of arrest—issue of— Or. 16, r. 10 (3)

witness—when—cannot be ordered to attend in person— Or. 16, r. 19

——may depart— Or. 16, r. 16

**examination of—**

commissioner—by— Or. 26, r. 16 (*a*)

issues—examination of witness before framing— Or. 14, r. 4

power to examine witness immediately— Or. 18, r. 15

——to recall and examine witness— Or. 18, r. 16

remarks on demeanour of witness— Or. 18, r. 11

witness about to leave jurisdiction of Court— Or. 18, r. 16 (1)

——to be examined in open Court— Or. 18, r. 4

WOMEN—
- decree against wife—when may be executed against husband— Or. 22, r. 7 (2)
- exemption of—from arrest in execution of money-decrees ... S. 48
- ——in certain cases—from personal appearance— S. 97
- marriage of female party —suit not to abate by— Or. 22, r. 7
- ornaments of—and attachment— S. 52 (1)

WRITTEN STATEMENT— *See* Pleadings.
- amendment of— Or. 6, r. 17
- defence founded on separate grounds— Or. 8, r. 7
- denial must be specific— Or. 8, r. 5
- ——of contract—how to be made— Or. 6, r. 8
- evasive denial— Or 8, r. 4
- facts not denied in—to be taken as admitted— Or. 8, r. 5
- fact deemed to be admitted —power of Court to require proof of— Or. 8, r. 5 proviso.
- failure to amend within time fixed by Court— Or. 6, r. 18
- fraud—defence of—to be set forth in— Or. 8, r. 2
- illegality—defence of— Or. 8, r. 2

WRITTEN STATEMENT.—(*Concld.*)
- inspection of documents mentioned in— Or. 11, r. 15
- limitation—defence of— Or. 8, r. 2
- new facts must be specially pleaded— Or. 8, r. 2
- ——ground of defence—which has arisen after written statement— Or. 8, r. 8
- payment—or performance —defence of— Or. 8, r. 2
- pleading includes,— Or. 6, r. 1
- procedure where party fails to present—called for by Court— Or. 8, r. 10
- relief claimed by defendant must be specifically stated— Or. 7, r. 7
- set-off founded on separate grounds— Or. 8, r. 7
- set-off—particulars of—to be given in written statement— Or. 8, r. 6
- ——when—may be claimed in— Or. 8, r. 6
- signing of,— Or. 6, r. 14
- striking out unnecessary, scandalous or embarrassing matter in,— Or. 6, r. 16
- subsequent pleadings— Or. 8, r. 9
- surprise—to state grounds which would take opposite party by— Or. 8, r. 2
- Verification of— Or. 6, r. 15

WRONG—*See* Tort.

# REGULATION IX OF 1100.

**A Regulation to amend the Travancore Limitation Regulation, VI of 1100,**

*Passed by Her Highness the Maha Rani Regent of Travancore under date the 32nd Karkatakam 1100 corresponding with the 16th August 1925.*

Whereas it is expedient to postpone the commencement of the Travancore Limitation Regulation, VI of 1100; It is hereby enacted as follows:—

Substitute "Makaram" for "Chingam" in Section 1 (3) of the Travancore Limitation Regulation, VI of 1100.

# REGULATION X OF 1100.

**A Regulation to amend the Code of Civil Procedure, Regulation VIII of 1100,**

*Passed by Her Highness the Maha Rani Regent of Travancore under date the 32nd Karkatakam 1100 corresponding with the 16th August 1925.*

Whereas it is expedient to postpone the commencement of the Code of Civil Procedure, Regulation VIII of 1100; It is hereby enacted as follows:—

Substitute "Makaram" for "Chingam" in Section 1 (2) of the Code of Civil Procedure, Regulation VIII of 1100.

# REGULATION I OF 1101.

**A Regulation further to amend the Travancore Limitation Regulation, VI of 1100, as amended by Regulation IX of 1100**

*Passed by Her Highness the Maha Rani Regent of Travancore, under date the 20th December 1925, corresponding with the 6th Dhanu 1101, under Section 14 of Regulation II of 1097.*

Whereas if is expedient further to amend the Travancore Limitation Regulation, VI of 1100, as amended by Regulation IX of 1100; It is hereby enacted as follows :—

**1.** In the third division of the First Schedule to the Travancore Limitation Regulation, VI of 1100:—

(*a*) in the entry in the first column of Article 144 (*a*), the figures "297", "493" and "495" shall be substituted for the figures "298", "490" and "492" respectively, and the word "Travancore" shall be inserted between "the" and "Penal Code"; and

(*b*) in the entry in the first column of Article 144 (*b*), the figures "448", "503", "504" and "505", shall be substituted for "447", "500", "501" and "502" respectively, and the word "Travancore" shall be inserted between "the" and "Penal Code".

# REGULATION II OF 1101.

**A Regulation to extend the period within which applications may be made under Section 33 (1) of the Travancore Ezhava Regulation, III of 1100**

*Passed by Her Highness the Maha Rani Regent of Travancore, under date the 28th Makaram 1101 corresponding with the 10th February 1926, under Section 15 of Regulation II of 1097.*

Whereas it is expedient to extend the period within which applications may be made under Section 33 (1) of the Travancore Ezhava Regulation, III of 1100; It is hereby enacted as follows :—

## REGULATION III OF 1101.

Notwithstanding anything contained in Sub-section (1) of Section 33 of the Travancore Ezhava Regulation, III of 1100, any application under that Sub-section, though made after the expiry of the period of six months from the commencement of that Regulation, shall be deemed, for purposes of the said Regulation, to have been made within such period, if made on or before the last day of the month of Medam 1101 M. E.

---

# REGULATION III OF 1101.†

**A Regulation further to amend the Code of Civil Procedure (Regulation VIII of 1100) as amended by Regulation X of 1100**

*Passed by Her Highness the Maha Rani Regent of Travancore, under date the 9th Kumbhom 1101 corresponding with the 20th February 1926, under Section 20 of Regulation II of 1097.*

Whereas it is expedient further to amend the Code of Civil Procedure (Regulation VIII of 1100) as amended by Regulation X of 1100, for the purposes hereinafter appearing; We are hereby pleased to enact as follows:—

Short title.

1. This Regulation may be cited as the "Civil Procedure Code Amendment Regulation, of 1101."

Repeals.

2. The enactments mentioned in the Schedule hereto annexed are hereby repealed to the extent specified in the fourth column thereof.

Insertion of a new Section after Section 38.

3. In the Code of Civil Procedure (Regulation VIII of 1100) as amended by Regulation X of 1100, (hereinafter referred to as the said Code), after Section 38, the following Section shall be inserted, namely:—

Execution of decrees passed by Courts in British India and Indian States.

"38-A. (1) Our Government may, from time to time, by Notification in Our Government Gazette,

(*a*) declare that the decrees of all or of any of the Civil Courts situate in British India or in the territories of any Indian Prince or State in alliance with His Majesty the King, Emperor of India, may be executed in Travancore as if they had been made by the Courts of Travancore, and

(*b*) cancel any such declaration.

† The Regulation was published in the Gazette dated 2nd March 1926.

(2) It shall be competent to the High Court, with Our previous sanction, to make such Rules, as may be necessary for the guidance of the subordinate Courts in executing the decrees mentioned in Sub-section (1). The provisions of Part IX of this Code shall not apply to such Rules."

Amendment of Section 64.

4. In the said Code, after Section 64, the following shall be inserted as Explanation to that Section, namely:—

"*Explanation.*—Suits by or against the Sreepadam Palace shall be treated as suits by or against Our Government, for the purposes of this Code."

Insertion of new Sections after Section 66.

5. In the said Code, after Section 66, the following Sections shall be inserted, namely:—

Suits by or against the Government of His Majesty.

"66-A. (1) Suits by or against the Government of His Majesty the King, Emperor of India, shall be instituted by or against the Secretary of State for India in Council.

(2) All pleadings signed or verified, and all appearances, applications and acts made or done, in any such suits by any officer or officers authorised in that behalf by the law for the time being in force, with respect to similar suits in British India, shall be deemed valid in the same manner and to the same extent as they are in British India.

Suits by or against Indian Princes.

66-B. (1) Any Indian Prince in alliance with His Majesty the King, Emperor of India, may sue and shall be sued in Our Courts in the name of his Minister or other officer provided that such Minister or other officer has been recognised by a Notification of Our Government published in Our Government Gazette as the representative of such Prince.

(2) The recognition made by the aforesaid Notification may be made with retrospective effect from such date as may be mentioned in the Notification.

(3) Our Government may, by like Notification, cancel any such Notification but not so as to invalidate any proceedings held previous to such cancellation.

*Explanation*:—Nothing in the Rules in the First Schedule relating to suits by or against minors and persons of unsound mind or such Rules as may hereafter be passed relating to the same matter under the provisions of Part IX of this Code shall apply to any such Prince suing or being sued under the provisions of this Section.

6. In the said Code, after Section 67, the following Sections shall be inserted, namely:—

Insertion of new Sections after Section 67.

"67-A. No decree passed against the Government of His Majesty the King, Emperor of India, or against any Indian Prince in alliance with His Majesty or against any officer of such Government or Prince in his capacity as representative of such Government or Prince shall be executed without the previous sanction of Our Government.

No decree against the Government of His Majesty or Indian Prince to be executed without Government sanction.

67-B. Subject to the provisions of Section 67-A, such decree as is mentioned in that Section shall be executed only against the immoveable property, if any, of such Government or Prince situate within Travancore."

Such decrees to be executed only on immoveable property.

7. In the said Code, after Section 99, the following Sections shall be inserted, namely:—

Insertion of new Sections after Section 99.

"99-A. Such persons serving in or with the Army of His Majesty the King, Emperor of India, as Our Government may, from time to time, specify by Notification in Our Government Gazette, shall not be liable to be arrested for debt under any process issued by, or by the authority of, any of the Civil Courts.

Exemption from arrest of persons serving in or with His Majesty's Army.

99-B. The Judge of any of the Civil Courts may examine into any complaint made by any such person mentioned in Section 99-A or by his superior officer, of the arrest of such person contrary to the provisions of this Code, and may by warrant under his hand discharge such person.

Inquiry into complaint of arrest.

99-C. The arms, horses, clothes, equipment, regimental accoutrements and necessaries of any such person mentioned in Section 99-A shall not be seized nor shall his pay or allowances or any part thereof be attached in satisfaction of any decree obtained against him or any person whom he may represent."

Arms, etc., of persons mentioned in Section 99-A not liable to seizure.

## SCHEDULE.

*(See Section 2.)*

ENACTMENTS REPEALED.

| 1 | 2 | 3 | 4 |
|---|---|---|---|
| Year | Number. | Subject or short title. | Extent of repeal. |
| 1061 | IV | A Regulation to authorise execution in Travancore of the decrees passed by the Civil Courts in British India and Cochin State. | The whole Regulation. |
| 1070 | II | A Regulation to amend the Code of Civil Procedure. | So much as has not been repealed except Section 11. |
| 1088 | | Proclamation defining how the Government of His Majesty should sue and be sued in the Courts of Travancore. | The whole Proclamation. |

# REGULATION IV OF 1101.†

**A Regulation to explain certain expressions occurring in the Regulations, Proclamations, Rules, Notifications and Orders in Travancore**

*Passed by Her Highness the Maha Rani Regent of Travancore, under date the 9th Edavom 1101, corresponding with the 22nd May 1926.*

Whereas it is expedient to explain certain expressions occurring in the Regulations, Proclamations, Rules, Notifications and Orders in Travancore;

We are pleased to enact as follows :—

**1.** This Regulation may be called "The Travancore Sovereignty (Interpretation) Regulation of 1101".

**2.** In every Regulation, Proclamation, Rule, Notification or Order now in force or hereafter brought into force, unless there be something repugnant in the subject or context, the words We, Our, Us and other expressions referring to the Sovereign of Travancore shall include a Regent who is also a member of the Ruling Family of Travancore.

† The Regulation was published an Extraordinary issue of the Gazette dated 22nd May 1926.

# REGULATION V OF 1101.†

**A Regulation to bring under better control the Newspapers in Travancore**

*Passed by Her Highness The Maha Rani Regent of Travancore, under date the 9th Edavom 1101, corresponding with the 22nd May 1926.*

WHEREAS it is expedient to bring under better control the Newspapers in Travancore; We are pleased to enact as follows:—

1. This Regulation may be called "The Travancore Newspapers Regulation of 1101" and it shall come into force at once throughout the whole of Travancore.

2. In this Regulation unless there is something repugnant to the subject or context—

(a) "Print," "printed" and "printer" apply not only to printing, but also to typewriting, lithography, engraving and photography; and

(b) "Newspaper" means any periodical work containing public news or comments on public news printed in any language.

3. (1) No Newspaper shall be printed or published in Travancore for the printing and publishing of which a license has not been obtained in such form and manner as may be prescribed by Rules framed by Our Government in that behalf from time to time and on payment, within such time as may be fixed by such Rules, of such fee not exceeding five hundred rupees as Our Government may in each case see fit to require.

(2) When an application for a license has been made in such form and manner as may be prescribed by Rules framed by Our Government in that behalf from time to time and the fee required has been paid as above, the applicant shall be entitled to have a license granted to him.

4. Whenever any Newspaper ceases publication except in the circumstances described in Section 5 or Section 7, the fee paid under Section 3 or Section 6 shall be refunded upon representation by the licensee and thereupon the license issued under Section 3 or Section 6 shall be deemed to have been revoked.

† The Regulation was published in an Extraordinary Issue of the Gazette dated 22nd May 1926.

5. Whenever it appears to Our Government that any Newspaper in respect of which a license has been granted under this Regulation—

(i) contains any words, signs, or visible representations which are likely or may have a tendency, directly or indirectly, whether by inference, suggestion, allusion, metaphor, implication or otherwise—

(*a*) to excite disaffection against or bring into hatred or contempt Us or Our Government or His Majesty the King Emperor of India or the Government established by law in British India, or

(*b*) to bring into hatred or contempt any member of the Ruling Family of Travancore, or

(*c*) to promote feelings of enmity or hatred between the several classes of people in Our territory, or

(ii) habitually publishes matter punishable under Section 503 of the Travancore Penal Code, or

(iii) habitually disseminates false information,

Our Government may with or without previous warning cancel, by notice in writing to the printer as well as to the publisher of such Newspaper indicating or describing such words, signs, visible representations or matter, the license granted in respect of such Newspaper and upon such cancellation the declarations made under Sections 7 and 8 of the Travancore Press Regulation of 1079 in respect of such Newspaper, shall be deemed to have been annulled and the license fee shall be forfeited to Our Government.

*Explanation.*—For the purposes of Clause (*a*) of Sub-section (i) of this Section, Explanations I, II and III under Section 117 of the Travancore Penal Code shall be deemed to be applicable.

6. When a license granted in respect of any Newspaper has been cancelled under Section 5, Our Government may in its discretion grant a fresh license, unconditionally or otherwise, upon payment of such fee not exceeding two thousand five hundred rupees as may be fixed by Our Government, or may refuse to grant a fresh license in respect of such Newspaper or any other Newspaper which in the opinion of Our Government is in substance identical with the Newspaper in respect of which the license has been cancelled.

7. (1) If, after a fresh license has been granted under Section 6, any issue of the Newspaper contains any words, signs, visible representations or matter, in the opinion of Our Government of the nature described in Section 5, Our Government may, by notice in writing to the printer as well as to the publisher of such Newspaper indicating or describing such words, signs, visible representations or matter, cancel such fresh license and declare the license fee to be forfeited to Our Government and may further by Notification in Our Government Gazette declare every copy of the issue of the Newspaper containing such words, signs, visible representations or matter to be forfeited to Our Government, and thereupon any Police Officer may seize any such copy wherever found, and any Magistrate may by warrant authorise any Police Officer not below the rank of an Inspector to enter upon and search for such copy in any premises where it may be or may be reasonably suspected to be.

(2) Every warrant issued under this Section shall, so far as relates to a search, be executed in the manner provided for the execution of search-warrants under the Code of Criminal Procedure.

8. (1) Whoever is in possession of any copy of any issue of a Newspaper declared to be forfeited under Section 7 (1) of this Regulation knowing it to be so declared shall within 5 days of his possession of it with such knowledge surrender it to the officer in charge of the nearest Police Station.

(2) Whoever contravenes the provisions of Sub-section (1) of this Section shall on conviction by a Magistrate be punished with fine not exceeding rupees fifty in respect of each copy of such issue of the Newspaper in his possession.

9. Any person aggrieved by an order under Section 5 or Section 7 may, within two months from the date of such order, apply to Our Government for reconsideration of such order on the ground that the Newspaper in respect of which such order was made did not in fact contain any words, signs, visible representations or matter of the nature described in Section 5, and Our Government shall thereupon either revoke such order or shall refer such application to Our High Court forwarding to the said Court a copy of such order with the connected records.

10. (1) Every such application shall be heard and determined by a Full Bench of Our High Court and the said Bench shall decide whether

the words, signs, visible representations or matter contained in the Newspaper in respect of which the order in question was made were or were not in fact of the nature described in Section 5.

(2) A copy of such decision under the seal of the Court and the signature of the Registrar shall be sent to Our Government with the connected records.

(3) If, in the opinion of the Full Bench, or when there is a difference of opinion, in the opinion of the majority of the Judges composing the Full Bench, the words, signs, visible representations or matter referred to in Sub-section (1) were not in fact of the nature described in Section 5, Our Government shall, on receipt of such decision, revoke the said order.

11. On the hearing of any such application with reference to any Newspaper, any copy of such Newspaper published after the commencement of this Regulation may be given in evidence in aid of the proof of the nature or tendency of the words, signs, visible representations or matter contained in such Newspaper which are alleged to be of the nature described in Section 5.

12. Whoever prints or publishes any Newspaper for the printing and publishing of which a license has not been obtained under the provisions of this Regulation or prints or publishes a Newspaper in respect of which the license has been cancelled, shall, on conviction by a Magistrate, be liable to the penalty to which he would be liable if he had failed to make the declaration prescribed by Section 7 of the Travancore Press Regulation of 1079.

13. No prosecution for any offence under this Regulation shall be started except under the authority of Our Dewan.

14. Notwithstanding anything contained in this Regulation, any Newspaper in respect of which the necessary declarations as prescribed by Sections 7 and 8 of the Travancore Press Regulation of 1079 have been made before the commencement of this Regulation shall be deemed to have complied with the provisions of Section 3 of this Regulation if, in respect of such Newspaper, a license is obtained within thirty days after the commencement of this Regulation.

15. No order passed or action taken under this Regulation shall be called in question in any Court otherwise than in accordance with the provisions of this Regulation.

---

# REGULATION V OF 1101.

## GOVERNMENT NOTIFICATION.

*(No. R. O. C. 4155 of '26. / Legislative, dated the 22nd May 1926.)*

In exercise of the powers conferred by Section 3 of the Travancore Newspapers Regulation of 1101, the Government of Her Highness the Maha Rani Regent of Travancore are pleased to make the following Rules for the issue of licenses under the said Regulation.

**1.** An application for a license under Section 3 or for a fresh license under Section 6, shall be made by the printer and publisher of the Newspaper jointly or by any one of them.

**2.** Every application for a license under Section 3 shall be in Form I annexed.

**3.** Whenever any such application is made to the Government, the Government shall pass an order fixing the fee to be paid and notice of such order shall be given to the applicant or applicants.

**4.** The fee fixed in such notice shall be paid into any Government treasury and the receipt therefor produced before the Chief Secretary to Government within seven days of the receipt of such notice. In default, no further action shall be taken on the application.

**5.** On the production of the receipt as required in Rule 4 above, the Government shall issue a license in Form II annexed.

**6.** Every application for a fresh license under Section 6 shall be in Form III annexed.

**7.** Whenever any such application for a fresh license is made and the Government decide to grant a fresh license, the Government shall pass an order fixing the fee to be paid and the conditions, if any, subject to which the grant is to be made and notice of such order shall be given to the applicant or applicants.

**8.** The fee fixed in such notice shall be paid into any Government treasury and the receipt therefor produced before the Chief Secretary to Government within ten days of the receipt of such notice. In default, no further action shall be taken on the application.

**9.** On the production of the receipt as required in Rule 8 above, the Government shall issue a license in Form IV annexed.

**10.** The number and date of the license under which a Newspaper is printed and published shall be clearly printed below the title on the front page of each copy of the Newspaper.

## TRAVANCORE NEWSPAPERS

### FORM I.

*Application for license under Section 3 of the Travancore Newspapers Regulation of 1101.*

1. Name of the Newspaper.
2. Place of printing and of publication.
3. Name of Press at which printed.
4. Language of the paper.
5. Name, full address and residence of
    (*a*) Printer
    (*b*) Publisher and
    (*c*) Editor.

6. Whether the necessary declarations as prescribed by Sections 7 and 8 of the Travancore Press Regulation of 1079 have been made and if so, the dates on which and the Magistrates before whom the declarations were made.

7. The intervals at which the Newspaper is to be published (*i. e.*, whether daily, weekly, etc).

8. Signature of the applicant or applicants.

I/We hereby declare that the particulars herein contained are true.

Place.
Date. *Signature of applicant or applicants.*

---

### FORM II.

*License issued under Section 3 of the Travancore Newspapers Regulation of 1101.*

Fee Rupees............

No.

Under Section 3 of the Travancore Newspapers Regulation of 1101, license is hereby granted to..................(name of licensee) to print at......... (place of printing) and publish at..................(place of publication) a Newspaper entitled.............. ..(name of Newspaper) in the . ...............language as a ..................(daily, weekly, etc.)

Trivandrum,
Date. *Chief Secretary to Government.*

---

# REGULATION V OF 1101.

## FORM III.

*Application for a fresh license under Section 6 of the Travancore Newspapers Regulation of 1101.*

1. Name of the Newspaper.
2. Place of printing and of publication.
3. Name of the Press at which printed.
4. Language of the paper.
5. Name, full address and residence of
   (a) Printer
   (b) Publisher and
   (c) Editor.

6. Whether the necessary declarations as prescribed by Sections 7 and 8 of the Travancore Press Regulation of 1079 have been made and if so, the dates on which and the Magistrates before whom the declarations were made.

7. The intervals at which the Newspaper is to be published (*i. e.*, whether daily, weekly, etc.)

8. Date and number of previous license.
9. The amount of fee paid for the previous license.
10. Date of cancellation of previous license.
11. Signature of applicant or applicants.

I/We declare that the particulars herein contained are true.

Place.

Date. *Signature of applicant or applicants.*

---

## FORM IV.

*Fresh license issued under Section 6 of the Travancore Newspapers Regulation of 1101.*

Fee Rupees..........

No.

Under Section 6 of the Travancore Newspapers Regulation of 1101, a fresh license is hereby granted to..............(name of licensee) to print at ..................(place of printing) and publish at..................(place of publication) a Newspaper entitled..............(name of Newspaper) in the........... language as a..................(daily, weekly, etc.)

* This license is granted subject to the following conditions and the breach of any of these conditions shall *ipso facto* render this license invalid.

*Conditions.*

Trivandrum,

Date. *Chief Secretary to Government.*

* This portion to be scored out if the grant of fresh license is unconditional.

NANJINAD VELLALA

# REGULATION VI OF 1101.

## THE NANJINAD VELLALA REGULATION.

CONTENTS.


Preamble.

CHAPTER I.

**Preliminary.**

Sections.

1. Short title.
   Application.
   Commencement.
2. Definitions.
   " Marumakkathayam ".
   " Tarwad ".
   " Thavazhee of a female ".
   " Thavazhee of a male ".

CHAPTER II.

**Marriage and its Dissolution.**

3. Marriage.
4. Subsequent marriage when void.
5. Dissolution of marriage.
6. Petition for dissolution of marriage.
7. Notice to be given to respondent.
8. Order of dissolution of marriage when and how passed.
9. Provisions of the Civil Procedure Code applicable to enquiry.
10. Order appealable to High Court.
11. Order awarding compensation, &c., executable as a decree.
    Court fee to be levied.

CHAPTER III.

**Maintenance and Guardianship.**

12. Maintenance of wife and minor children.
13. Guardianship of minor wife and children.

## REGULATION VI OF 1101.

### CHAPTER IV.

### Intestate succession.

Sections.

**14.** Property in respect of which a Nanjinad Vellala is considered to have died intestate.

**15.** Where intestate male has left children or lineal descendants of deceased children or both.

**16.** Rules of distribution of estate under Section 15.

**17.** Where intestate male has left widow and mother only.

**18.** Where intestate male has left mother only.

**19.** Where intestate male has left father only.

**20.** Where an intestate male has left none of the heirs mentioned in Sections 15 to 19.

**21.** Where intestate female has left children or lineal descendants of deceased children.

**22.** Where intestate female has left husband only.

**23.** (1) Where intestate female has left mother's lineal descendants only.

(2) Where intestate female has left father only.

**24.** Where intestate male or female has left none of the heirs mentioned in the preceding Sections.

**25.** Provisions of Section 16 to apply to distribution of estate in Sections 21, 20 and 23.

**26.** Undivided share of a person in Tarwad property treated as his or her property.

---

### CHAPTER V.

### Testamentary Succession.

**27.** Nanjinad Vellala to have full testamentary power over separate or self-acquired property.

---

### CHAPTER VI.

### Adoption.

**28.** Adoption by mutual consent of husband and wife.

**29.** Adoption by widow or widower alone.

---

CHAPTER VII.

## Partition of Tarwad Property.

Sections.

**30.** Right to claim partition.

**31.** Share on partition.

**32.** Property acquired by gift or bequest from father or husband before or after the Regulation.

---

CHAPTER VIII.

## Supplemental Provisions.

**33.** Wife and children not entitled to Nankudama and Ukantudama after commencement of this Regulation.

**34.** Saving.

---

## A Regulation relating to Marriage, Succession and Partition among the Nanjinad Vellalas

*Passed by Her Highness the Maharani Regent of Travancore, under date the 20th June 1926, corresponding with the 6th Mithunam 1101, under Section 14 of Regulation II of 1097.*

Preamble.

Whereas it is expedient to define and amend the law relating to marriage, succession and partition among the Nanjinad Vellalas: It is hereby enacted as follows:—

---

I. 1. The need for legislation relating to marriage, family management and inheritance had been felt by the Nanjinad Vellala community, and the demand for a law being enacted on the subject arose as much from a desire to legalise the existing forms of marriage and regularise the vague and ill-defined rights of *Ukanthudama* and *Nankudama* as in a feeling that altered economic and social conditions had rendered vast, and even fundamental, changes in the family law necessary for ensuring the progressive welfare of the society. At the third and the sixth session of the Sri Mulam Popular Assembly, representations were made on the subject and the appointment of a Committee of enquiry urged.

A Committee was accordingly appointed in 1910 (G. O. No. 3905, dated 21st July 1910), with the then Dewan Peishkar, Padmanabhapuram, as Convener, and two non-officials as members, to investigate and report if any legislation is necessary and, if so, on what lines, about (1) the circumstances under which divorce is allowed; (2) how far partition is allowed: (3) the extent of the rights called *Ukanthudama* and *Nankudama*; (4) the powers of a *Karnavan* in the management of *Tarwad* properties; and (5) the nature and conditions of adoption allowed. The report of this Committee, dated the 22nd June 1911, was published in the Government Gazette and the opinion of

the community was invited on the recommendations made therein. Briefly, the recommendations of the Committee were that no legislation was required regarding partition and the powers of *Karanavans*; that dissolution of marriage should be effected not only by the death of either party or by mutual consent, but also by the order of a competent Court which should issue a formal order of dissolution but need not go into the grounds alleged by the applicant claiming divorce and only decide the amount of compensation payable to the respondent: that one-seventh of the deceased member's share in the *Tarwad* properties together with one-half of his self-acquisitions should be allotted as *Ukanthudama*; that one-third of the *Ukanthudama* share be fixed as the *Nankudama*; and that the adoption of one's wife and children as heirs be allowed without any levy of *adiyara* fees. These recommendations were substantially accepted by the Government; and, at the meeting of the Legislative Council held on the 5th June 1913, permission was granted to introduce a Bill on the above lines. The Bill was duly published in the Government Gazette and also passed the Select Committee stage. As it was then evident, from the memorials submitted to Government by the members of the Nanjinad Vellala community, that the community wanted a more comprehensive Bill containing provisions relating to the power of testamentary disposition, intestate succession, etc., and that the Bill, as it was, did not satisfy them, it was, by leave, withdrawn, at the meeting of the Legislative Council held on the 20th December 1920. The agitation for the introduction of a more comprehensive measure began immediately afterwards. Representations on the subject were made at the fifteenth and sixteenth sessions of the Assembly: and in reply to an interpellation in the Legislative Council, Government foreshadowed the appointment of a new Committee in order to ascertain accurately the feelings of the community regarding the legislation wanted.

**2.** The second Committee was appointed with the then Dewan Peishkar of Padmanabhapuram as President and two Nanjinad Vellala gentlemen as members. Subsequently, the Committee was strengthened by the addition of two Anandarava members. Two members from North and Central Travancore were also co-opted.

**3.** The Committee was to collect the necessary evidence and submit definite proposals as to the changes, if any, that have to be introduced in the customary law relating to (1) the dissolution of marriage, (2) partition, (3) adoption, (4) the rights of *Ukanthudama* and *Nankudama*, (5) the powers of the Karanavan, and (6) testamentary and intestate succession obtaining among the community, together with a draft Bill embodying their proposals.

**4.** The Committee was appointed by G. O. R. O. C. No. 33/ Legis., dated 4th February, 1921. They submitted their unanimous report and a draft Bill with their letter dated 3rd January 1922. The Report was published in the Gazette dated 11th April 1922, and opinions on the recommendations of the Committee were invited from the members of the community affected. These were considered and a Bill introduced in the Legislative Council.

II. The Bill which was thus introduced followed closely the Committee's draft Bill. The Statement of Objects and Reasons appended to the Bill said:—"Parts III and IV however have been re-drafted, but in doing so, the principles underlying the Committee's draft has not been materially interfered with. The only modification that has been made is in Clause 16 of the present Bill. While, in the absence of the widow or children of an intestate, the Committee's proposal is that the brothers and sisters and their descendants, that is, the members of the Thavazhee of the intestate are made to succeed the intestate, in the Committee's Bill the mother is omitted

though she is a member of the Thavazhee. This omission is, it is believed, only an inadvertent one, and hence the mother's name is also specifically included in Clause 16. * *"

In introducing the Bill, the Official Member in charge said :—" * * It is a matter for gratification that the report of the committee and the draft Bill they appended were unanimous and that there was no dissentient note. It is equally creditable to find that, even after the publication of the report and the draft Bill, no serious opposition has been received from the members of the community excepting a petition signed by about 3 or 4 people. Excepting that, the community as a whole seems to have accepted the report and the draft Bill, and therefore we may safely take it that the draft Bill represents the opinion of the community and safely proceed upon it.

The main changes that are recommended have been discussed and detailed in the report itself and I do not think that it is necessary at all for me to make any lengthy observations thereon. But I may refer to the few important changes that have been made in the Bill with reference to the other *Marumakkathaya* Bills, namely the Nair or the Ezhava Bill. In the first place, it is stated that, though ordinarily marriage should be in a particular form, namely the *talikettu* form or the *agnisakshi* form, a remarriage can take place in ordinary *sambandham* form between a widower and a widow only. Both the parties should have already been married once and such marriage should have been dissolved either by death or divorce. That is one of the conditions. Perhaps that may be a matter to be threshed out by the Council later on as in the case of the other bills.

Monogamy is to be enforced. With reference to divorce, there seems to be a strong opinion in the community that divorce should not ordinarily be for no reason whatsoever, and, therefore, divorce is proposed to be for specific reasons. * *

The next point of difference is with regard to individual partition. Individual partition is allowed and the only restriction seems to be that during the life-time of the mother no one can claim individual partition, and in the case of even *Tarwad* property, if a man dies, his wife and children would be entitled to the property that he would have obtained on division before his death. * *"

III. Leave to introduce the Bill was applied for and granted at the meeting of the Council held on 25-11-1922 (*L. C. P., Vol. II, P. 501*). The Bill was published on 14-11-1922, and introduced and referred to a Select Committee on 30-10-1923 (*L. C. P., Vol. IV, Pp. 76-105*). The Select Committee's Report was published on 13-1-1925 and presented to the Council on 12-2-1925 (*L. C. P., Vol. VI, Pp. 1122-1125*). The Report and the amended Bill were considered at the meetings of the Council held on 2, 3 & 5-11-1925 and 20-4-1926 (*L. C. P., Vol. VIII, Pp. 40-83, 129-146, 296, 369, 750-757*). The Bill was finally read and passed on 23-4-1926 (*L. C. P., Vol. VIII, Pp. 1082-1084*). The Regulation was published in the Gazette dated 22nd June 1926.

IV. In view to understand the requirements of the community and the main recommendations made by the Second Committee on which the Bill was based, extracts from the Report of that Committee are given below and under the Sections concerned.

"8. The following extract from the Report of the previous Committee contains the accepted traditional account of the beginnings of Nanjinad and also explains the origin of the mixed system of inheritance followed by the Nanjinad Vellala Community :—

'Tradition has it that the tract of country now known as Nanjinad was originally colonised by people from the Coromandal Coast. Several families from Pandy migrated to this land, cleared the jungles by degrees and settled there. The term Nanjinad

means the land environed by *Nanja* lands or one fortified by natural barrriers, * *

'When the Nanjinadians became isolated from their kinsmen beyond the ghats, they began to exchange their social and domestic constitution. Their inheritance became modified, their matrimonial ideas altered, and their caste structure became in course of time an interesting medley of Tamil and Malayalam social characteristics. Thus, the first marriage of the Nanjinad Vellala is purely of the Pandya type, and the second is the *Sambandham* of the Malayalees. The law of inheritance, so far as it relates to *Nankudama* and *Ukanthudama* is of the Pandya *Makkathayam* system, but in all other respects it is the *Marumakkathayam* of the Nayars. The dress and ornaments of the females are those of the Tamilians, but the attire and mode of wearing front tufts, &c., of the men are similar to those of the Nayars. The compulsory performance of obsequial ceremonies by the son is a relic of the *Makkathayam* system. The performance of such rites by nephews in the absence of son is in accordance with the *Marumakkathayam* custom. In fact, in all their important social and religious customs, the combination of *Makkathayam* and *Marumakkathayam* ways can be observed to exist.'

'The following tradition is extant to show how the Nanjinadians, who were *Makkathayees* before, became *Marumakkathayees*. There was once a dispute as to the sovereignty of Nanjinad between the Pandyan and Travancore kings. It was contended by the Pandyan King that the whole of Nanjinad was under his sway, that the Pandyan Anai was constructed in memory of a Pandyan King and that, for these and other reasons, the sovereign right vested in him. He also said that the Travancore King and his people are *Marumakkathayees*, whereas the people of Nanjinad were *Makkathayees*, like the Pandyan people. This was opposed by the Travancore King who said that the Nanjinadians were *Marumakkathayees*, that the Pandyan Dam was constructed by the Travancore Government in memory of a Pandyan king who was friendly with his contemporary King of Travancore. The dam was soon after destroyed and made unserviceable. The Nanjinadians deposed to their having become Travancore subjects and made a solemn statement before the Madura Temple that they followed the *Marumakkathayam* law of inheritance. Subsequently they adopted the *Marumakkathayam* and widow-marriage customs obtaining in Malabar, retaining some of the *Makkathayam* customs as they had been followed before.'

* * * *

"10. If the traditional account is to be believed, the change from the *Makkathayam* to the *Marumakkathayam* system of inheritance was an act deliberately undertaken by the community. There is no doubt that the community originally followed the *Makkathayam* system and that the features of the matriarchal system were subsequently grafted on it. Their having come under the sway of a royal house following the matriarchal system of succession, a rupture with their brethren in the Tamil country, the influence of environments, certain advantages which that system confers on a pre-eminently agricultural community, and latterly the influence of the judiciary appear to have contributed, each in a greater or less degree, to their repudiation one by one of the principles of Hindu law and acceptance of those of the *Marumakkathayam* law.

"11. The joint family in its fully developed stage is unknown to the community. The first marriage of a Vellala girl is an *Agnisakshi* marriage. Marriage before puberty is not insisted on, and post-puberty marriage is the rule. The wife generally lives with the husband and not in her family house. Re-marriage of widows is allowed and it is solemnised by the presentation of cloth, a practice adopted from the *Marumakkathayees*. The widow and her children acquire, on the death of her husband, a title to a portion of the share of

## CHAPTER I.

### Preliminary

Short title.

**1. (1)** This Regulation may be called "the Nanjinad Vellala Regulation of 1101."

Application.

**(2)** It shall apply to all Nanjinad Vellalas domiciled in Travancore, and to such Nanjinad Vellalas not so domiciled as have or shall have marital relation with Nanjinad Vellalas domiciled in Travancore.

Commencement.

**(3)** It shall come into force on the 1st Chingom 1102.

Definitions.

**2.** In this Regulation, unless there is something repugnant in the subject or context—

"Marumakkathayam."

(1) "Marumakkathayam" means the system of inheritance in which descent is traced in the female line.

"Tarwad."

(2) "Tarwad" means and includes all the members of a Marumakkathayam family with community of property.

"Thavazhee of a female."

(3) "Thavazhee of a female" means a group of persons consisting of that female and her issue how-low-soever in that female line, or such of that group as are alive.

"Thavazhee of a male."

(4) "Thavazhee of a male" means the thavazhee of his mother.

---

the deceased in his family property, *Ukanthudama*, and an issueless widow too has a similar right, *Nankudama*. No *anandaravan* can claim partition of the family property and the powers and privileges of *karanavans* and *anandaravans* are identical with those in a Nayar *tarwad*. The obsequial ceremonies of a man are performed by his son or his brother's son in preference to his sister's son. The men ordinarily wear the front tuft, but the women may be said to stick to the old mode of dress and ornaments. The customs and usages of the community are thus a mixture of principles borrowed from the *Makkathayees* as well as from the *Marumakkathayees*."

## CHAPTER II.

### Marriage and its Dissolution.

Marriage.

3. The conjugal union of a Nanjinad Vellala male, subject to the restrictions of consanguinity and affinity according to custom, with a Nanjinad Vellala female, openly solemnised according to recognised custom and usage, whether before or after this Regulation comes into force, shall be deemed to be a valid marriage for all legal purposes:

Provided that no conjugal union, so solemnised after the date on which this Regulation comes into force, in the case of a male who has not completed eighteen years of age, or of a female who has not completed sixteen years of age, shall be deemed to be a valid marriage, unless it takes place with the consent of his or her legal guardian, or unless such conjugal union is adopted and continued after the attainment of eighteen or sixteen years of age, as the case may be, by the party or parties concerned.

*Illustrations.*

(a) C, a male, commits adultery with B, who has married A, or entices away B, who, he knows, has married A. C is liable to punishment under Section 500 or 501, Travancore Penal Code.

(b) C, a male, marries B, who has married A, during the continuance of A's marriage. Such marriage being void under Section 4, B and C are liable to punishment for bigamy under Section 497, Travancore Penal Code, and abetment thereof respectively.

(c) A, a male, having sufficient means, neglects or refuses to maintain B whom he has married. B is entitled to apply for maintenance under Chapter XXXV, Criminal Procedure Code.

(d) B, a female, who has married A, refuses to cohabit with the latter without just cause. A may bring a civil suit for restitution of conjugal rights.

---

**Sec. 3**: The Committee in their report observed :—

"13. The first marriage of Vellala girl is invariably an *Agnisakshi Vivaha* conducted with the pomp and ceremony suited to the circumstances of the parties. The description given in their report by the previous Committee, reproduced below, is substantially correct and gives a fairly full account :—

* * *

"With the change in outlook brought about by modern education, there has been a tendency in some quarters to reduce the period of duration of the ceremonies ; but its importance has not been diminished nor

the religious and sacramental character of the rite affected. The tying of a cloth round the head of the bridegroom known as the *Urumalkettu* and signifying his entry into manhood and fitness for marital connection is observed as a formality preceding the *Thalikettu*.

"14. The religious marriage has all along been recognised by the community as valid marriage from time immemorial and doubts which recent judicial decisions appear to have thrown upon its legality or binding character should be removed by legislation. * * Marriage according to custom among the community creates a valid union, and should by law be declared binding on the parties thereto."

"15. * There is almost complete unanimity of opinion that the tying of the *thali* by the bridegroom round the bride's neck at the auspicious hour, *muhurtam*, with due publicity and the chanting of the *mantras* under the guidance of the family priest and with intent to marry is the most important and the one essential and operative portion of the whole round of ceremonies. The *thali* has become the symbol of the marital tie, and, without its being tied, the marriage cannot be deemed to have been performed. Some consider that *panigrahanam*, *i. e.*, the taking by the father or guardian of the bride's hand and placing it in the bridegroom's hand in token of his consent to the alliance and as a sign of handing over charge is also an essential part. The Committee consider that *thalikettu* as described above should alone be considered the essential and operative part of the marriage, the one item the non-performance of which would make the marriage void. *Panigrahanam* is conducted generally by the father; but if the bride's father is not living at the time of the marriage, it is performed by some relation or even friend acting as his representative.

* * *

"17. The Nanjinad Vellalas are a homogeneous community and intermarriages with other communities seldom take place. There are rare instances of *Makkathaya* Vellala men marrying *Marumakkathaya* Vellala women. Instances of *Marumakkathaya* Vellala men marrying women belonging to the *Makkathaya* caste are rarer, as the wife and children could not inherit the husband's property. In the former case, the widow and children succeed to the property of the deceased husband and it goes to augment the *Tarwad* property. Marriage outside the community is not viewed with favour generally and the community are anxious that their individuality should be kept up. The recognition of such marriages would bring in its train complications about the rights of the wife and children, for even if the Committee's proposals are accepted, the law of inheritance would differ fundamentally from the law now followed by *Makkathaya* Vellalas. The subsisting marriages, if any, of the kind would, of course, continue and should not become invalid. The Committee agree with the opinion that marriages of the Nanjinad Vellalas within the community alone should be valid and legal in future."

"18. Custom and convention have decreed that marriage between certain relations should be prohibited. Subject to the restrictions regarding consanguinity and affinity imposed by usage, the conjugal union of a Nanjinad Vellala male and female openly solemnised as described above should be binding and valid."

* * *

"23. Widow re-marriage is an accepted institution in the community. Among the witnesses, a small number, *viz.*, 8, wanted that perpetual widowhood should be enforced as in the case of *Makkathaya* Vellalas. But a very large majority of the witnesses are against this proposal. There are a small number of witnesses who would allow a widow to remarry if young or without issue. The Committee agree with the majority that no restriction should be imposed on the existing custom in regard to widow re-marriage.

4. The subsequent marriage of a male or of a female during the continuance of a prior marriage and performed after the coming into force of this Regulation shall be void.

Subsequent marriage when void.

5. A marriage may be dissolved only in one of the following ways, that is to say,—

Dissolution of marriage.

(i) by the death of either party; or

(ii) by mutual consent evidenced by a registered instrument; or

---

"24. Re-marriage of a widow is usually done by what is known as *Sambandham* marriage. *Sambandham* consists of the solemnisation of a re-marriage openly by the presentation of a red cloth to the female by the male on an auspicious day in the presence of near relatives. The ceremony takes place usually at night. The operative portion of the *Sambandham* is the giving of a colored cloth by the male to the female with intent to marry. Some witnesses have opined that all the ceremonies of the *Talikettu* marriage should be repeated for *Sambandham*. This is neither usual nor necessary. The existing custom is that a woman already married by *Talikettu* and who has since become a widow is re-married by *Sambandham*. In the case of a man, there are exceptional cases in which his first marriage has been by way of *Sambandham*. The general and accepted custom, however, is that a man's first marriage is by *Talikettu*. The Committee considered the question whether it should be free for a man who has not first married by *Talikettu* to marry a widow by *Sambandham*. While it is not desirable to impose restrictions on the freedom of a man to marry as he wishes, yet in view of the insistence of monogamy recommended by the Committee and of the very rare exceptions to the rule, the majority of us consider that the sacrament of marriage should be binding equally on man and woman. In other words, the first marriage for *both* man and woman should be by *Talikettu* or sacramental marriage, re-marriage alone being performed by *Sambandham* or social marriage. Although at present it is not unusual for a man to marry more than once by *Talikettu* or by *Sambandham*, yet it would conduce to the welfare of society to apply the same rules to man and woman. * * *

"25. For the purposes of re-marriage, a widow should include not only a woman who has lost her husband by death but also a woman who has been legally divorced from her husband.

"26. For all legal purposes, the status of a *Sambandham* wife should be equal to that of a wife married by *Talikettu*. This is the view of the majority of witnesses and is also the existing usage. Several of the witnesses have also deposed that the sons by *Sambandham* marriage perform the obsequies of the father, *i. e*, for all social religious and legal purposes, the issues by both kinds of marriages being equal. There is no objection to allow this equality of status."

**Sec. 5**: The Committee said in their Report :—

"22. The Committee have carefully considered the various shades of opinion expressed and they have come to the following conclusions :—

(i) Absolute freedom of divorce should not be allowed ;

(iii) by a formal order of dissolution, as hereinafter provided, on any of the following grounds, namely,

(a) adultery, or
(b) bigamy, or
(c) change of religion, or
(d) incurable disease, physical or mental, or
(e) habitual cruelty to wife.

*Explanation*:—"Habitual cruelty" shall include wilful desertion for a period of two years or more and shall also include persistent neglect on the part of the husband to maintain the wife.

Petition for dissolution of marriage.

6. (1) A husband or wife may present a petition for dissolution of the marriage under Section 5, clause (iii), stating the facts on which the claim to have such marriage dissolved is founded, in the District Court within the local limits of whose jurisdiction the respondent resides, carries on business, or personally works for gain, or, if the respondent resides, carries on business, or personally works for gain in any place outside Travancore, in the District Court within whose jurisdiction the petitioner resides.

(2) A wife, though a minor, shall be competent herself to apply for dissolution of marriage if she has completed sixteen years of age.

Notice to be given to respondent.

7. A copy of such petition as aforesaid shall be served on the respondent at the expense of the petitioner, and in the manner provided for the service of summons on a defendant in the Code of Civil Procedure.

Order of dissolution of marriage when and how passed.

8. Three months after the service of the copy as aforesaid—

(1) if the petition is not withdrawn in the meantime, and if the respondent does not agree to the

---

(ii) Restrictions should be placed as far as possible to check freedom of divorces;

(iii) Divorce may be effected for adequate reasons and that only through the intervention of the Civil Court except in the case of mutual consent evidenced by a registered document;

(iv) Incurable disease of the husband or wife, lunacy, conversion to another religion, cruelty and unchastity should be considered adequate reasons for divorce;

(v) In cases of divorce effected on account of incurable disease, insanity or other causes for which the party affected is not responsible, the party asking for divorce should pay adequate compensation to the other party, the amount being determined by the Court;

* * *

dissolution of the marriage, the Court shall enquire into the petition and shall allow or dismiss the petition as it thinks fit;

(2) if the petitioner is the husband and his prayer is granted, the Court shall in cases falling under Sub-clause (*d*) of Clause (iii) of Section 5, award such compensation to the wife or such monthly allowance until her remarriage as would be proper under the circumstances having regard to his position, means and circumstances;

(3) if the petitioner is the wife and her prayer is granted the Court shall award such compensation to the wife or such monthly allowance until her remarriage as would be proper under the circumstances, having regard to the position, means and circumstances of the husband.

Provisions of the Civil Procedure Code applicable to enquiry.

9. The provisions contained in the Code of Civil Procedure shall, as far as possible, apply to an enquiry under Section 8:

Provided that all proceedings under Section 8, either before a Court or before a commission appointed by a Court, shall be held *in camera*, and that the publication of any account of such proceedings, except the final order and the decree thereon, shall be punishable with simple imprisonment for a term of six months or with fine which may extend to one thousand rupees or both.

Order appealable to High Court.

10. Subject to the provisions of the Code of Civil Procedure and the Limitation Regulation applicable to appeals from original decrees, an appeal shall lie to the High Court from an order granting or refusing dissolution of marriage, or payment of compensation or monthly allowance under the provisions of Section 8.

Order awarding compensation, etc., executable as a decree.

11. In so far as it awards payment of compensation or monthly allowance or costs, an order of the District Court or an order passed on appeal shall, subject to the provisions of the Limitation Regulation relating to the execution of decrees, be executable as a decree:

Court fee to be levied.

Provided, however, that an order of the District Court awarding compensation, or monthly allowance, shall be executable only on payment of Court fee on the sum adjudged.

## CHAPTER III.

### Maintenance and Guardianship.

Maintenance of wife and minor children.

**12.** The wife and minor children, except married daughters under the guardianship of their husbands, shall be entitled to be maintained by the husband or father as the case may be :

Provided that the wife shall not be entitled to maintenance if she lives in adultery or refuses to live with the husband without just cause, or has changed her religion.

Guardianship of minor wife and children.

**13.** (1) The husband shall be the legal guardian of his minor wife, and, save as regards married daughters under the guardianship of their husbands, the father the legal guardian of his minor children in respect of their person and property. On the death of the father, the mother shall be the legal guardian of the minor children.

(2) Where a female has minor children by a former husband, deceased or divorced, she shall be the legal guardian in respect of their person as also of the separate property belonging to them.

---

**Sec. 12**: The Committee in their Report said :—

"41. Although, in the terms of reference, the Committee had not been specifically required to enquire into and report on the question of maintenance and guardianship, they considered it essential that, in a law relating to marriage, inheritance, etc., of the community, provision should explicitly be made on the matter and with that view they gathered evidence on those points also. The general opinion is that, during the life-time of both the parents, the father should be the legal guardian of the minor children and after his death the mother. The husband should be the legal guardian of the minor wife. Failing the father and the mother, the paternal relations should have the right of guardianship in preference to maternal relations, an elder brother of the minors being preferred to the relations of their parent. The Committee concur in these views.

"42. The wife and children should be legally entitled to be maintained by the husband and father respectively. The husband's property will always be liable to the right of maintenance of the wife ; and after his death the property descends to his children subject to this right of maintenance of the widowed mother."

## CHAPTER IV.

### Intestate Succession.

Property in respect of which a Nanjinad Vellala is considered to have died intestate.

14. For the purpose of this Chapter, a Nanjinad Vellala is considered to die intestate in respect of property of which such person has not made a testamentary disposition which is capable of taking effect.

Where intestate male has left children or lineal descendants of deceased children or both.

15. On the death of an intestate male leaving him surviving children or the lineal descendants of deceased children or both, they shall be entitled to the whole of his property subject to the right of the widow or widows of the intestate for maintenance until her or their death or remarriage.

Rules of distribution of estate under Section 15.

16. The distribution of the estate under Section 15 shall be according to the following rules:—

(i) Sons and daughters shall take the property in equal shares:

Provided that, if a son or daughter shall have predeceased the intestate, the lineal descendants of such child shall take the share which such child would have taken had it survived the intestate.

(ii) Grandchildren shall take in equal shares what their father or mother would have taken had he or she survived the intestate. In like manner, the property shall go to the surviving lineal descendants of the intestate where they are all in the degree of great-grand-children to him or in a more remote degree.

*Illustrations.*

(1) Z dies intestate leaving a son A, a daughter B, and the lineal descendants of a deceased son C. A and B each gets a third of the estate and the lineal descendants of C together get a third of the estate.

(2) Z dies intestate leaving a son A, a daughter B, two grandchildren by a deceased daughter C, and two grandchildren and one great-grandchild by a deceased son D. A and B each gets a fourth of the estate; each of the grandchildren by C gets one-eighth; each of the grandchildren by D gets one-twelfth; and the great-grandchild by D gets one-twelfth of the estate.

---

Sec. 16: The Committee in their Report observed:—" * * * The Committee have no hesitation in recommending that partition should be *per capita* among all the members, male and female, and *per capita* only.

"31. Among the advocates of partition, there is a consensus of opinion that the succession should be according to *Makkathayam* system, that the widow and children should inherit the property of a deceased male. Even those who would be con-

17. (1) On the death of an intestate male leaving him surviving no children or the lineal descendants of deceased children but only his widow or widows and his mother, the widow or widows shall enjoy the whole of his property until her or their death or remarriage without any power of alienation, provided, however, that if the income from the property is insufficient even for bare maintenance, the widow or widows may alienate such property.

Where intestate male has left widow and mother only.

(2) On the death or remarriage of the widow or widows, the property shall devolve on the mother.

18. On the death of an intestate male leaving him surviving neither his widow nor his children nor the lineal descendants of deceased children, but only his mother, his property shall devolve on his mother.

Where intestate male has left mother only.

19. On the death of an intestate male leaving him surviving neither his widow, nor his mother, nor his children nor the lineal descendants of deceased children, but only his father, his property shall devolve on his father.

Where intestate male has left father only.

20. On the death of an intestate male leaving him surviving none of the heirs mentioned in Sections 15 to 19, his property shall devolve on his mother's lineal descendants.

Where an intestate male has left none of the heirs mentioned in Sections 15 to 19.

---

tent with *Thaivazhi* partition and some of the declared adherents of the existing system are not opposed to granting the sons and daughters a greater share in a man's family property and self-acquisition than now. Many have sought individual partition expecting that *Makkathayam* would inevitably follow as a necessary corollary.

"35. Opinions regarding the powers of the man or woman in respect of the divided share of the *Marumakkathayam* property allotted to him or her cover a very wide range. * * *

The Committee have carefully considered the various shades of opinion expressed and have come to the conclusion that no restriction whatever should be placed on the powers of alienation of the property vested in any person on partition of the *Marumakkathayam* family, and that this rule should be followed even after the property descends to one's issue. Partition cannot therefore be claimed by children during the life-time of parents. If either of the parents dies, the property of the deceased should be divided equally among the children, subject to the right of maintenance of the widow if she is the survivor.

"36. The Committee have also come to the conclusion that both male and female children should have equal shares on partition, and that the share which each gets should be the absolute property of the sharer with full powers of disposal. The natural love and affection of one's wife and children should be depended on to provide for them, and the Legislature need not intervene to enforce this necessity and import the complicated questions of Hindu law to safeguard such rights."

21. On the death of an intestate female leaving her surviving her children or the lineal descendants of deceased children, or both, they shall be entitled to the whole of her property.

Where intestate female has left children or lineal descendants of deceased children.

22. On the death of an intestate female leaving her surviving no children, or the lineal descendants of deceased children, but only her husband, the husband shall enjoy the whole of her property until his death or remarriage without any power of alienation.

Where intestate female has left husband only.

23. (1) On the death of an intestate female leaving her surviving no children or lineal descendants of deceased children or husband, or on the death or remarriage of the husband succeeding under Section 22, her property shall devolve on her mother's lineal descendants.

Where intestate female has left mother's lineal descendants only.

(2) In the absence of her mother's lineal descendants, her father shall take the whole.

Where intestate female has left father only.

24. On the death of an intestate male or female leaving him or her surviving none of the heirs mentioned in the preceding Sections, but only the widow or the husband, as the case may be, such widow or husband shall be entitled to the whole of his or her properties.

Where intestate male or female has left none of the heirs mentioned in the preceding Sections.

25. The provisions contained in Section 16 shall, as far as may be, apply to the distribution of the estate among the lineal descendants of the intestate female mentioned in Section 21 and among the mother's lineal descendants mentioned in Sections 20 and 23.

Provisions of Section 16 to apply to distribution of estate in Sections 21, 20 and 23.

26. For the purpose of this Chapter, the undivided share of a male member of a Tarwad, or of a female member of a Tarwad dying without leaving her surviving any member of her Thavazhee, in his or her Tarwad property, determined as at the time of his or her death, shall be treated as his or her property.

Undidived share of a person in Tarwad property treated as his or her property.

---

## CHAPTER V.

### Testamentary Succession.

Nanjinad Vellala to have full testamentary power over separate or self-acquired property.

27. Notwithstanding anything contained in the Wills Regulation, VI of 1074, a Nanjinad Vellala may dispose of by will the whole of his or her separate or self-acquired property.

---

## CHAPTER VI.

### Adoption.

Adoption by mutual consent of husband and wife.

28. A husband may, with the consent of his wife, adopt an unmarried male child, if they have no issue, and the adopted son shall have all the rights of a natural born son.

Adoption by widow or widower alone.

29. A widow or widower may also take in adoption an unmarried male child, but such adopted son shall succeed only to the separate or self-acquired property of the adoptive mother or father, as the case may be.

---

**Sec. 27:** The Committee observed in their Report:—

"48. The present disability in the matter of wills should be removed. A Nanjinad Vellala should be able to dispose of by will the whole of his or her self-acquired or separate property. The recommendations of the Committee contained in the Chapter on Partition and Intestate succession aim at giving full and absolute powers of disposal in the holder and it should be made possible to effect by means of a testament what can be done by a transaction *inter vivos*."

**Secs. 28 & 29:** The Committee say in their Report:—

"40. There exists now a Proclamation enabling Nanjinad Vellalas to adopt a *seshakaran* on payment of *adiyara*. This Proclamation is all but become a dead letter because during the last half a century there have been few instances of such adoption. The reason appears to be the prohibitive rate of *adiyara* required to be paid under the Proclamation. Escheat of property is evaded by transactions *inter vivos* such as gifts and purchase of property in the name of wife and children. The statement relating to escheat cases in the community embodied in *Appendix IX* would prove this. The last heir of a *Marumakkathayam* property transfers the same to his wife and children during his life-time and thus defeats the escheat right of Government. If, as recommended by the Committee above, individual partition of *Marumakkathayam* property and the descent of the same by *Makkathayam* succession are allowed, adoption as *Seshakaran* will not be required in future. For a childless couple to continue the line about to become extinct, adoption is necessary and it is the custom obtaining in *Makkathayam* families. The question for consideration is whether, during the life-time of the husband and wife

## CHAPTER VII.

### Partition of Tarwad Property.

30. Subject to the claims, if any, of the heirs arising under Chapter IV, to the undivided share of any deceased member of a Tarwad determined as at the time of his or her death, every member of a Tarwad shall be entitled to claim his or her share of the properties of the Tarwad.

Right to claim partition.

31. Every member of a Tarwad shall be entitled on division to so much of the properties of the Tarwad as will fall to his or her share if—

Share on partition.

(1) one-half of the properties were divided *per capita* among all the members of the Tarwad living at the time of division, and

(2) the other half were divided *per stirpes, i. e.*, among the male children then living of the common ancestress and their sisters, the Thavazhee of each daughter being entitled to the share of such daughter:

Provided that, if any daughter of the common ancestress were dead, the Thavazhee of such daughter will take what such daughter would be entitled to if she were alive at the time of division:

Provided further that, if the common ancestress were alive at the time of division, she would be entitled to a share equal to that of hers.

---

there should be the consent of both for adoption or either of them could adopt a child as he or she thinks fit. The consensus of opinion is that husband and wife should adopt with mutual consent only. The Committee agree to this view. But on the death of either, the survivor may be allowed to adopt an heir to his or her property alone. A small minority of witnesses are agreeable to the adoption of a female child. The Committee do not approve of this suggestion but agree with the majority of witnesses in thinking that a male child alone should be adopted. One important reason which has weighed with the Committee in coming to this decision is that the male child is alone competent to perform the obsequies of the parent, while a female child will go into the family of her husband after marriage. The Committee further think that an unmarried male child alone should be adopted. They whould recommend that the levy of *adiyara* fees be discontinued."

Sec. 31 : 1. The provisions as to partition contained in the Bill as introduced in the Council were :—

"9. Subject to the provisions of Section 11, every member of a Tarwad may claim or be compelled to divide from any other member of the Tarwad.

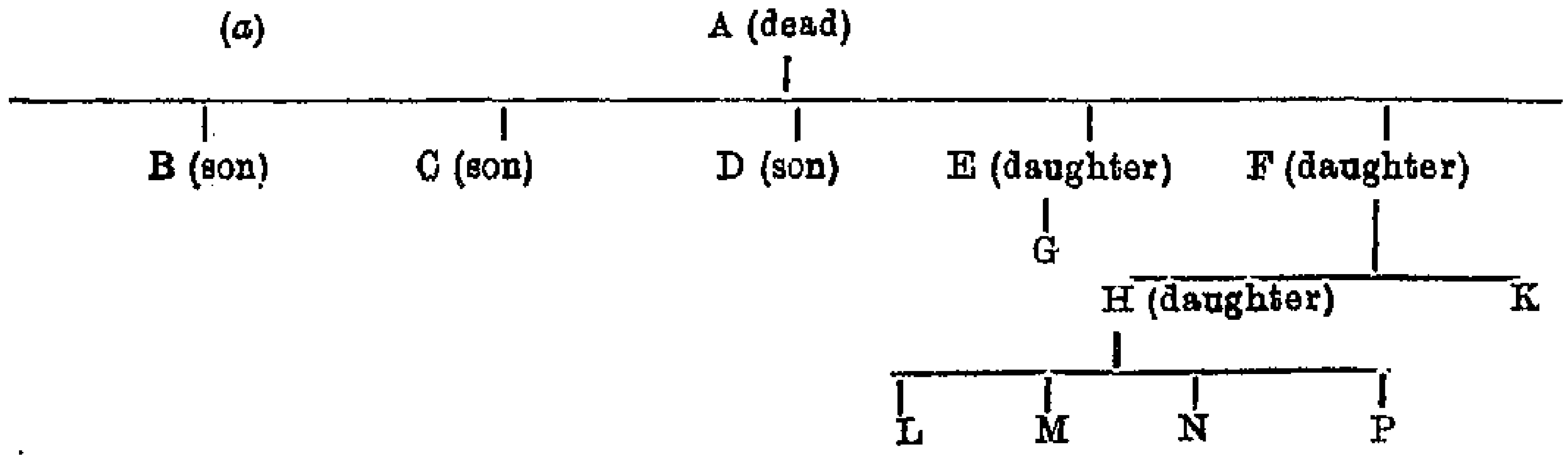
"10. Tarwad property shall be divided equally among all its members.

"11. No claim for partition of Tarwad property shall accrue to any person during the life-time of the mother of such person."

*Explanation.*—Property of the Tarwad means so much of the property as belongs to the Tarwad deducting the claim , if any, of the heirs, arising under Chapter IV, to the undivided share of any deceased member of the Tarwad.

*Illustrations.*

(*a*)




If in a family composed as indicated in the above table, the value of the Tarwad property were Rs. 24,000, one-half, *i. e.*, Rs. 12,000, will be divided equally among B, C, D, E and F, each getting Rs. 2,400. The other half will be divided into twelve equal shares among B to P, each of them getting Rs. 1,000. Thus B, C and D will each get Rs. 3,400. The fourth share of Rs. 2,400 will be divided equally between E and G, and each of them will get Rs. 1,200 therefrom *plus* Rs. 1,000 being the share *per capita*, or Rs. 2,200 in all. F and K will each get one-third of the fifth share of Rs. 2,400 or Rs. 800 therefrom *plus* Rs. 1,000, being the share *per capita*, or Rs. 1,800 in all. H, L, M, N and P will each get one-fifth of Rs. 800 or Rs. 160 therefrom *plus* Rs. 1,000, being the share *per capita*, or Rs. 1,160 in all.

(*b*) If, in illustration (*a*), A also were living, one-half will be divided into six shares each getting Rs. 2,000 and the other half into thirteen shares. Thus, A will get Rs. 2,000 *plus* one-thirteenth of Rs. 12,000.

(*b*) If, in illustration (*a*), F were dead at the time of partition, K will be entitled to get one-half of Rs. 2,400 *plus* one-eleventh of Rs. 12,000.

---

**2.** The Select Committee modified the provisions as follows :—

"30. Every member of a Tarwad shall be entitled to claim his or her share of the properties of the Tarwad.

"31. Tarwad property shall be divided equally among all its members."

The Committee said :—

*Clauses 9 and 11.* The restriction contained in clause 11 of the Bill about a person's right to claim partition during the life-time of the mother was not found in the original Bill as drafted by the Nanjinad Vellala Committee. It seems to have been introduced in the present Bill on a misapprehension of clause 11 of the Committee's draft Bill. We, therefore, think that clause 11 may be deleted and consequently the words "subject to the provisions of Section 11" in clause 9 have also to be deleted.

Substitute the following for clause 9 in the Bill :—

"12. Every member of a Tarwad shall be entitled to claim his or her share of the properties of the Tarwad."

*Clause 10.* This is the most important provision in the whole Bill. There is a difference of opinion as to the method of partition provided for in the clause. This difference of opinion may be stated shortly as follows :—

It is asserted by one party that usage is in favour of allowing members of the same grade in a tarwad to share equally irrespective of the number of children or descendants which any female member of the same grade may have. In other words, this party claims *per stirpes* partition. According to the other party, every member of a tarwad irrespective of his or her grade in the tarwad has an equal right and should therefore share equally. In other words, this party claims *per capita* partition. The report of the Nanjinad Vellala Committee as well as the Bill drafted by them support the latter view. * *

We have heard deputations from both parties on this subject. We have read the various memorials presented to us and we have also examined the documents produced before us as establishing their respective contentions. As this seems, however, to be the only important point on which there is difference of opinion among the members of the community, we have thought it necessary to examine this question in some detail. The reasons for *per stirpes* partition are stated to be as follow :—

(1) The Nanjinad Vellalas were originally Makkathayees who have subsequently adopted Marumakkathayam law. This will appear from—

(*a*) the fact that wife and children have a right of *Ukanthudama* :

(*b*) the fact that a daughter has a right of *Stridhanam* at the time of marriage ;

(*c*) the ceremonials observed on the occasion of marriage ; and

(*d*) the circumstance that the marriage expenses of a male are a charge on the tarwad property.

(2) Partition frequently takes place in a tarwad and an examination of such documents will disclose the usage of *per stirpes* partition.

The reasons for *per capita* partition are shortly these :—

(1) Nanjinad Vellalas are Marumakkathayees with certain usages which have crept into the system.

(2) The Courts have always been systematically applying the principles of the Marumakkathayam law to the community except in a few well-recognised cases of usage to the contrary.

(3) Every member of a tarwad has a right to maintenance and all adult members irrespective of their grade are entitled to get the same equally (11 T. L. J. 358) ; and, if *per stirpes* partition were allowed, it will seriously affect vested rights.

(4) The Nanjinad Vellalas style themselves as Marumakkathayees in all documents.

(5) Out of 311 witnesses examined by the Committee, 224 were for *per capita* partition.

(6) The Committee's report was unanimous.

(7) The Bill, as drafted by the Committee, was not objected to by any member of the community.

(8) A difference of opinion became manifest only when the Bill was introduced into the Council.

We have discussed and considered the various points placed before us and we think that *per capita* division is the just and more reasonable course to adopt. If the documents produced showed a definite usage as to *per stirpes* partition, we would have hesitated to accept this view. But the documents do not prove any definite usage at all. There are documents evidencing *per stirpes* partition, there are also documents evidencing *per capita* partition, and there are again documents which establish neither the one nor the other. We

**Property acquired by gift or bequest from father or husband before or after the Regulation.**

32. Property acquired by gift or bequest from the father or husband, whether before or after the commencement of this Regulation, shall, for the purposes of this Chapter, in the absence of evidence to the contrary, be treated as the Tarwad property of the donees or devisees and of their Thavazhee.

## CHAPTER VIII.

## Supplemental Provisions.

**Wife and children not entitled to Nankudama and Ukanthudama after commencement of this Regulation.**

33. The wife and children of a Nanjinad Vellala dying after the commencement of this Regulation shall not be entitled to the customary rights of Nankudama and Ukanthudama.

---

are therefore unable to find that a definite usage with regard to *per stirpes* partition has been established, so as to affect the vested rights of the members of a Marumakkathayam tarwad.

We are of opinion that the unanimous and carefully prepared report of the Committee should be followed.

The only thing that is clear from the evidence is that a Karanavan gets something more than others at the time of partition. We have given effect to this by providing for the same in this Chapter.

3. When the Bill was considered by the Council, the provisions were subject to prolonged discussion. The existing Section was substituted for the provision made by the Select Committee, on the motion of a Non-official member, after full discussion. The amendment was the result of a compromise which admitted the principles of the opposing views expressed on the subject.— *L. C. P., dated 5-11-1925.*

**Sec. 33:** The Committee in their Report observed :—

"43. The rights of *Ukanthudama* and *Nankudama* are a trace of *Makkathayam* system which the community originally followed. The following extract from the Report of the previous Committee describes the nature of these rights and how they have been till then upheld by decisions of Courts of law :—

'*Ukanthudama*.—The claim of the son performing the obsequial ceremonies to a portion of the father's family and self-acquired properties, is known as the right of *Ukanthudama*. This is a remnant of the old custom by which the sons receive a portion of their father's properties and relinquish their claims to the father's Tarwad properties, just like the co-parceners of a *Makkathayam* family divide their shares and separate themselves by partition. (*Vide* judgment in A. S. No. 195 of 1050 of the Travancore High Court.). In settling the *Ukanthudama*, the ancestral properties and recent self-acquisitions of the donor are taken together and divided among the co-parceners of that family, and from the portion of each co-parcener a moiety amounting from 1/10 to 1/7 is given away to his wife and children as *Ukanthudama*. Issueless men and women are not taken into account in the above allotment of family properties. The amount of *Ukanthudama* varies according to the earning capacity of the member, for whose sake

the grant is made, *i. e.*, the children of an earning member are generally given a seventh part and those of a non-earning member, a tenth part of the share of the member. In rare cases, a fourth part is given with the consent of all co-parceners and this may be in the case of a man who has been the sole earning member of the family. The father on no account can deprive the sons of the above right and it is not affected by any previous gift which the father has made the son in his life-time (*Vide* 23 T. L. R. p. 197 and judgment in O. S. No. 105 of 1057 of the Nagercoil Zillah Court). If during the life-time of a *Karanavan* one of his nephews dies with issue, the properties are divided among his mother and her brothers and her share is again sub-divided among her sons including the dead man from whose share is granted the *Ukanthudama* due to his children. If a man possesses many wives and all of them beget children, the issue by each wife are entitled to an equal share of the *Ukanthudama* (*Vide* IV T. L. R. pages 125 & 126). The allotment of *Ukanthudama* is according to the number of children and not according to the number of wives. Thus, if a man had two wives B & C and if B has two sons and C only one, two-thirds of the *Ukanthudama* fixed will go to B and one-third to C. The Ukanthudama due to wives and children of a deceased man from his family and self-acquired properties is a fixed amount and this does not increase with the number of wives and children, but the distribution is regulated by the number of children possessed by each (*vide* A. S. No. 14 of 1060 of the Travancore High Court and IV T. L. R.). From the years of 1076 to 1085, 200 *Ukanthudama* documents have been registered in the State. If a wife is divorced by her husband by means of the *vidumuri* and if she has children, such children are also entitled to *Ukanthudama* (*vide* judgment in O. S. No. 54 of 1063 of the Nagercoil Zillah Court). As re-marriage is permitted in the case of both man and woman, the issue of the re-married parties are also entitled to *Ukanthudama*. But the issue of a woman by a second husband cannot claim a right to the *Ukanthudama* amount of the issue of that woman by her first husband, during the former's life-time. Of course, after his death, the latter become entitled to it. Though *Ukanthudama* is mainly a *Makkathaya* custom, the gift is not subject to partition by its lapsing into a *Marumakkathaya* Tarwad. (*Vide* 16 T. L. R., pages 85 and 86.).

'There is also a modified form of *Ukanthudama* which is known in that community as *Yapia* (യാപ്യ) *Ukanthudama*. By this system, a portion of the Tarwad properties is set apart by the unanimous consent of the *Karanavan*, his wife and children and his co-parceners and nephews, for the maintenance for the *Karanavan* during his life-time and that portion is to be given as the *Ukanthudama* of his children after his death. The alienation by the *Karanavan* of such properties does not require the consent of the other members of his family, but requires the consent of the wife and children.

'*Nankudama*.—Next comes the right of a childless widow. Such a widow is entitled to maintenance from her husband's family in the shape of money allowance or properties yielding a specified amount. This right is called *Nankudama*. But childless young widows who have a prospect of re-marriage do not, as a rule, claim *Nankudama* nor do they remove the Thali tied at the time of their first marriage. There is a difference of opinion among the members of the community as to the nature of the right called *Nankudama*. One view is that it is the right of a childless widow for maintenance. Another view is that it is not merely an award for maintenance. It was no doubt originally meant for a widow's maintenance, but subsequently it took the shape of a right, claimable by the widow, just as *Ukanthudama*.

'The right is settled with reference to the status and assets of the deceased as well as with reference to the requirements of the

34. Nothing in this Regulation shall—

Saving.

(a) affect rights which have accrued according to custom before the date on which this Regulation comes into force ; or

(b) affect the existing rules of law, custom or usage except to the extent hereinbefore expressly provided for.

---

widow. The re-marriage of the widow does not deprive her of this claim, but this is a source of social degradation to her and her family, and consequently such of the widows who have a prospect of re-marriage do not generally demand or accept the *Nankudama* gift.'

"'45. The right of *Ukanthudama* arises in the widow and children only on the death of the husband and father. It was originally granted out of love as the term signifies; but latterly the intervention of the Courts has been freely sought to enforce the right. *Nankudama* is said to be the right of the issueless widow for maintenance till her death or re-marriage. Several of the witnesses are for fixing the *Ukanthudama* at a fixed proportion of the deceased person's share in the family property or the whole of that share and a share of his self-acquisition or the whole of that too.' * * If individual partition is granted and *Makkathayam* succession accepted, the necessity for fixing the rights of *Ukanthudama* and *Nankudama* and their ratios to each other and to the family property ceases. If that is not done, the community would not be satisfied with a law defining those rights only. They would, in that case, leave the questions alone to be decided by the Courts in each case. The Committee do not therefore consider it necessary to make any recommendations on those points."

---

*Cases*

*under the old custamary law.*

1. The assets available for Ukanthudama have to be divided equally among the children of a Nanjinad Vellala, whether male or female, and whether by one wife or more. Where a father leaves self-acquisition of considerable value, the child's share will be larger (*i. e.*, 1/7) and where he leaves no self-acquisition or where the acquisition is not worth much, the share will be 1/10.

A decree obtained by an Anandarayan not in management of family affairs and on a document standing in his own name, cannot be treated as family property.—

**4 T. L. R.**, *63.*

Fol.—16 T. L. R., 85.
Ref.—21 T. L. R., 179.
23 T. L. R., 197.
11 T. L. J., 36.
11 T. L. J., 229.
39 T. L. R., 196
(= 13 T. L. J., 190).

2. The law of succession applicable to the case of a Makkathayam Vellala man married to a Marumakkathayam Vellala woman, according to the custom of the husband's caste, is the ordinary Hindu Law, the marriage being legal, since it is practised by the Hindu Law and the general custom of the castes of the husband and wife.—

**9 T. L. R.**, *21.*

Dist.—20 T. L. R., 65.
Ref.—22 T. L. R., 18.

**3.** A Yappium Ukanthudama, being a grant made to the Karanavan's wife and children *during his life* as a provision for *himself* and *his family*, is analogous to a division of the Tarwad property and differs from Nankudama and Ukanthudama in that the latter imposes no obligation on the grantee to maintain any member of the grantor's Tarwad.

Yappium Ukanthudama grants are as absolute as Nankudama and Ukanthudama grants and pass to the heir of the grantees on their death.

The settlement in question being tantamount to a family compromise ought not to be allowed to be disturbed, unless it is clearly shown that it was a fraud on the Tarwad.— **13 T. L. R.,** *177.*

**4.** A donee of properties under Yappium Ukanthudama among Nanjinad Vellalas cannot enforce a division of the same.— **16 T. L. R.,** *85.*

Appl.—27 T. L. R., 86.
Ref. —21 T. L. R., 179.
23 T. L. R., 197.
Fol. —6 T. L. J., 453.
Rel. —39 T. L. R., 196
(= 13 T. L. J., 190).

**5.** Among Nanjinad Vellalas, as the issue of a marriage are entitled to a specific share in their father's Tarwad property and as the marriage of a male is compulsory in the family, the expenses of the marriage of a male member constitute a valid charge on Tarwad property.— **21 T. L. R.,** *179.*

Ref.—23 T. L. R., 197.

**6.** Marriage between a Makkathayam Vellala man and a Marumakkathayam Vellala woman is valid.— **22 T. L. R.,** *18.*

**7.** Plaintiff's father, defendant and Sivagnanam were three brothers. They had two sisters Ulagoo and Thanoo. Sivagnanam and the two sisters had predeceased plaintiff's father, the sister leaving grandchildren and great grandchildren, of whom three were males and three females. In a suit by plaintiffs for Ukanthudama wherein it was contended that for determining the Ukanthudama due to plaintiff their father's share at his death must be taken to be only ⅛ of the Tarwad properties the Tarwad then having consisted of 8 members including plaintiff's father or if males alone are taken into account the share should be taken to be ⅓, Sivangnanam also being taken into account :

*Held.*—For determining the share of a deceased member for the purpose of estimating the Ukanthudama due to his children, the number of male members of the same grade as the deceased who were alive at the time of death should alone be taken into account. Therefore in the present case, the share of plaintiff's father should be taken to be one-half of the Tarwad properties for the purpose of working out the Ukanthudama claimable (F. B.).— **23 T. L. R.,** *197.*

Ref.—31 T. L. R., 13
(= 5 T. L. J., 183).
11 T. L. J., 36.
11 T. L. J., 42.
11 T. L. J., 229.
38 T. L. R., 295
(= 14 T. L. J., 95).
39 T. L. R., 196
(= 13 T. L. J., 190).

**8.** In a suit for Ukanthudama by the children of a deceased brother of 1st defendant against the assets of the Tarwad :

*Held,*—As the 1st defendant was entitled to credit for the money paid as Ukanthudama to the children of another deceased brother and as plaintiffs' father made no self-acquisition, the plaintiffs were entitled to get one-tenth of one-third of the value of Tarwad properties.

A Karanavan could bind the Tarwad by acknowledging a barred debt.— **K. P.,** *3.*

**9.** The plaint property was given to the plaintiff and her sister, the deceased mother

of defendant as Ukanthudama. The plaintiff claimed the property exclusively on the ground that her sister having died, the said sister's interest devolved on her by the principle of survivorship.

*Held.*—Nanjinad Vellalas being essentially governed by the Marumakkathayam law, there was no reason for holding that the presumption arising in respect of transactions between Marumakkathayees, pure and simple, did not arise in the case of Nanjinad Vellalas. The plaintiff, therefore, was not entitled to claim the property which must be held to belong to the Sub-Tarwad of which the defendant was the Karanavan.— **27 T. L. R.,** ***86.***

Fol.—6 T. L. J., 453.
Ref.—39 T. L. R., 196
(= 13 T. L. J., 190).

**10.** In view of the current of rulings that the Nanjinad Vellalas are essentially Marumakkathayees and the presumptions arising in the case of transactions between Marumakkathayees, pure and simple, arise in the case of Nanjinad Vellalas also ; there is no reason why the rule of Marumakkathayam Law that the self-acquisitions of a member of the Tarwad lapse to his Tavazhi in preference to the common Tarwad should not be held to apply to the Nanjinad Vellalas also (F. B.).— **6 T. L. J.,** ***453.***

Ref.—39 T. L. R., 196
(= 13 T. L. J., 190).

**11.** In the case of Nanjinad Vellalas following the Marumakkathayam law of inheritance, the wife is not entitled to claim maintenance under Section 366 of the Criminal Procedure Code.—

**35 T. L. R.,** ***360.***

**12.** In a suit for Ukanthudama dues, where the Tarwad properties of the deceased father lie in Travancore and Cochin, there is nothing to prevent the plaintiffs from saying that they will be satisfied with a charge for their claim on the Travancore properties. This does not, however, have the effect of compelling them to restrict the calculation of their claim on the value of those properties alone. There is no legal bar to the plaintiffs to ask the Court to take the value of the Cochin properties, admittedly belonging to the said Tarwad or in respect of which the nature of the Tarwad's right, such as it is, is not disputed, also into account in making the calculation.—

**36 T. L. R.,** ***253***
**(= 10 T. L. J.,** ***329*****).**

Ref.—11 T. L. J., 36.

**13.** A suit for Ukanthudama dues by the son of a deceased Nanjinad Vellala father falls within the second part of Article 109 of the Limitation Regulation, and the period of limitation applicable is 12 years from the death of the father.— **11 T. L. J.,** ***36.***

**14.** In the appeal, the plaintiff—appellant, a childless Nanjinad Vellala woman, prayed for having the amount awarded to her by the lower Court as Nangudama enhanced. During the pendency of the appeal, the appellant died. Her daughter's son, thereupon, applied to be impleaded as her representative and to be allowed to prosecute the appeal :

*Held.*—The application was not maintainable under Sections 349 and 551 of C. P. C., in as much as the 'right to sue' did not survive. The expression 'right to sue' meant the right to bring a suit asserting a right to the same relief which the deceased plaintiff asserted at the time of the death. In the case, it could not be said that, if the plaintiff had died before the institution of the suit, her representative could have brought a suit for the recovery of the Nangudama which she would have been entitled to recover from her husband's estate. The claim for Nangudama was only a personal claim which ceased to be enforceable except when the same had been perfected by a judgment. So far as the claim for enhanced Nangudama was concerned, the plaintiff's suit had to be considered to have been dismissed ; in other

words, it had to be considered not to have been perfected by a judgment.—
**11 T. L. J.,** *42.*

Ref.—39 T. L. R., 196
(= 13 T. L. J., 190).

**15.** The suit was by the widow and children of one Aiyyamperumal, a deceased Nanjinad Marumakkavazhi Vellala, for recovery of Ukanthudama out of the latter's Tarwad properties. Aiyyamperumal had a brother Manickavasagam, who had predeceased him leaving a wi‹‹w and children behind, and these latter h‹‹ been given their Ukanthudama about 20 years prior to the date of suit. The questions that arose for decision were (1) what was the share of Aiyyamperumal in the Tarwad properties which would form the basis for the calculation of Ukanthudamai and (2) whether the Ukanthudamai was one-seventh or one-tenth of the said share.

*Held.*—(1) The predeceased brother had also to be taken into account for calculating the share in the Tarwad properties due to Aiyyamperumal because the widow and children of such brother were also entitled to Ukanthudamai. Accordingly, the share of Aiyyamperumal for the purpose of calculating Ukanthudama was one-half of the value of the Tarwad properties at his death.

(2) The Ukanthudama due to the children of a deceased Nanjinad Marumakkavazhi Vellala father is one-tenth of the said father's share in his Tarwad properties.—
**11 T. L. J.,** *229.*

Ref.—38 T. L. R., 295
(= 14 T. L. J., 95).

**16.** A Nanjinad Marumakkathayee Vellala father died leaving three daughters. One of the daughters also died leaving children. The members of the Tarwad of the deceased father executed an Ukanthudama deed in favour of the two surviving daughters. The question for decision was whether the Ukanthudama deed enured to the benefit of the children of the deceased daughter also.

*Held.*—The Ukanthudama is analogous to a Makkathayam gift in an ordinary Marumakkathayam Tarwad, and enures to the benefit of the members of the sub-tarwad formed by the wife of the person whose Tarwad property is conveyed on Ukanthudama and her descendants in the female line.—
**39 T. T. R.,** *196*
(**= 13 T. L. J.,** *190.*)

**17.** Ukanthudama claimable by the children of a deceased Nanjinad Vellala following the Marumakkathayam system of inheritance is one-tenth of his share of the Tarwad properties and not one-seventh (F. B.).—
**38 T. L. R.,** *295*
(**= 14 T. L. J ,** *95*).

**18.** The principle of the Full Bench decision reported in 18 T. L. J., 747 with reference to Section 39 of the Nair Regulation would apply to a Nanjinad Vellala family as well, as it determined when the status of division is attained in a Marumakkathayam family to the members of which a right to claim a partition has been granted by statute.—
**13 T. L. J ,** *906.*

CINEMATOGRAPH

# REGULATION I OF 1102.

## THE CINEMATOGRAPH REGULATION.

CONTENTS.


Preamble.

Sections.

| | | | | |
|---|---|---|---|---|
| 1. | Short title, extent and commencement | ... | ... | 1 |
| 2. | Definitions | ... | ... | 2 |
| | "Cinematograph." | | | |
| | "Prescribed." | | | |
| 3. | Cinematograph exhibitions to be licensed | ... | ... | 3 |
| 4. | Licensing authority | ... | ... | 4 |
| 5. | Restrictions on powers of licensing authority | ... | ... | 5 |
| 6. | Punishment for contravention of this Regulation and Rules made thereunder | ... | ... | 6 |
| 7. | Certification of films | ... | ... | 7 |
| 8. | Power to make Rules | ... | ... | 8 |
| 9. | Power to exempt | ... | ... | 9 |
| 10. | Saving as to cinematograph exhibitions in private dwelling-houses. | | | |


**A Regulation to make provision for the Regulation of Exhibitions by means of Cinematographs,**

*Passed by Her Highness the Maha Rani Regent of Travancore, under date the 10th Edavam 1102, corresponding with the 24th May 1927, under Section 14 of Regulation II of 1097.*

Preamble. Whereas it is expedient to make provision for regulating exhibitions by means of cinematographs:

It is hereby enacted as follows:—

**Regn. I of 1102: I.** (1) *Objects and Reasons.*—"The Bill is designed to ensure proper control of cinematograph exhibitions with particular regard to the safety of those attending them, and to prevent the presentation to the public of improper or objectionable films. The special danger from fire which attends cinematograph exhibitions, as has been illustrated by terrible catastrophes due to this cause in other

The figures on the right refer to the corresponding Sections of the Indian Cinematograph Act, II of 1918, as amended by Act XXIII of 1919.

countries, renders it important to secure, in the interests of the safety of spectators, a proper regard to the structural conditions of the premises utilised.

The Bill accordingly provides that no exhibition shall be given except in accordance with the conditions of a license granted by the prescribed authority. This license is intended to ensure that the intentions of the Regulation are complied with and that adequate precautions are taken for the safety of persons attending the exhibition which it covers. The Bill also provides for the constitution of authorities which will be required to pass all films intended for exhibition in the State and which will have power to refuse the necessary certificate in the case of any film, the production of which in public is open to objection for the reasons already given.

The Bill includes the ordinary rule-making provision and enables the Government to exempt any cinematograph exhibition or class of cinematograph exhibitions from the provisions of the law. Finally, it makes provision for the punishment of offences against the Regulation or the rules made thereunder.

The Bill is drafted on the lines of British Indian Act, II of 1918, but special provision is made here to exempt cinematograph exhibitions, not being of an indecent character given in private dwelling houses, from the operation of the proposed enactment."—
*S. O & R.*

(2) In introducing the Bill in the Council, the Official Member in charge said:—

"Two main purposes are sought to be achieved by this Bill. One is to ensure the safety of those who attend cinematograph exhibitions. The cinema has become a very popular amusement; and as a famous writer said recently in an article in a newspaper, it is a most momentous invention of this age next in importance only to the wireless. Naturally the cinematograph exhibitions are largely attended and it is necessary to look after the safety and protection of those who attend such performances. There must not be overcrowding, there must be sufficient ventilation, accommodation for latrine, etc., and above all, the people who attend must be protected from fire. The cinematograph apparatus is of an easily inflammable material and we have very often read of fires in cinematograph houses. One of the provisions of the Bill therefore is that the cinematograph exhibitions should be conducted only in licensed permises, one of the main conditions of the license being that sufficient arrangements should be taken to ensure the safety of the people who attend the performances.

Another important provision of the Bill and another object sought to be achieved by the proposed enactment is to prohibit the exhibition of improper films. The exhibition by means of cinematograph creates such a deep impression and such a thorough communion with the thing exhibited in the minds of those who attend that many, especially children, become permanently imbued with the spirit of what is exhibited. It is therefore necessary that the films that are exhibited are of a proper nature lest the morals of those who attend the cinemas, especially the younger folk, be depraved by exhibition of indecent scenes. I may say also that the cinematograph may be made an instrument for propagating seditious matter or such matter as would wound religious feelings of particular communities. I do not think therefore that it requires much argument from me to convince the House that the State must have some control over the exhibition by means of cinematograph and the character of the films exhibited. Provision is therefore made in the Bill that one of the conditions of the license should be that only such films as have been certified by a competent authority as fit for public exhibition are exhibited in cinema houses. I believe therefore that the Bill will be readily accepted by the House.

Short title, extent and commencement.

1. (1) This Regulation may be called "the Travancore Cinematograph Regulation".

(2) It extends to the whole of Travancore.

(3) It shall come into force on the 1st Thulam, 1103.

Definitions.

2. In this Regulation, unless there is anything repugnant in the subject or context—

"Cinematograph" includes an apparatus for the representation of moving pictures or series of such picture ; and

"Prescribed" means prescribed by Rules made under this Regulation.

Cinematograph exhibitions to be licensed.

3. Save as o ...se provided in this Regulation, no person shall ...n exhibition by means of a cinematograph ...ere than in a place licensed under this Regulation, or otherwise i... in compliance with any conditions and restrictions imposed by suc... ...ense.

Licensing authority.

4. The autho...ty having power to grant licenses under this Re...lation (hereinafter referred to as the "licensing ...thority") shall be, in Municipal areas, the respective Municipal Coun...s, and in other places, the District Magistrate or such other authority ... Our Government may appoint in that behalf by Notification in Our Government Gazette.

---

I may however say that there are some provisions in the Municipal Regulation relating to the issue of licenses to houses meant for public entertainment and it may be that some of those provisions overlap with those of the present Bill. I have therefore made a provision that the Government may constitute any person as the authority to give these licenses. Even the Municipal Chairman may be appointed as a competent authority though the District Magistrate will ordinarily be the licensing authority."

*L. C. P., dated 3-11-1925.*

II. The Bill was published in the Gazette dated 27-10-1925. It was introduced and referred to a Select Committee on 3-11-1925 (*L. C. P. Vol. VIII, Pp. 147-152*). The Committee's Report was published on 16-3-1926. It was presented to, and considered by, the Council on 20-4-1926 (*L. C. P., Vol. VIII, Pp. 757-779*) and 23-11-1926 (*L. C. P., Vol. X, Pp. 122-193*). The Bill as settled by the Council was published on 25-1-1927. It was finally read and passed on 26-4-1927 (*L. C. P., Vol. X, Pp. 466-469*). The Regulation was published in the Gazette dated 31-5-1927.

---

**Sec. 4**: (1) Section 4 of the British Indian Act runs as follows:—"4. The authority having power to grant licenses under this Act (hereinafter referred to as the "licensing authority") shall be the District Magistrate, or, in a Presidency Town or in the Town of Rangoon, the Commissioner of Police : Provided that the Local Government may, by Notification in the local Official Gazette, constitute for the

5. (1) The licensing authority shall not grant a license under this Regulation, unless it is satisfied that—

Restrictions on powers of licensing authority.

(a) the Rules made under the Regulation have been substantially complied with ; and

(b) adequate precautions have been taken in the place in respect of which the license is to be given to provide for the safety of persons attending exhibitions therein.

(2) A condition shall be inserted in every license that the licensee will not exhibit, or permit to be exhibited, in such place any film other than a film which has been certified as suitable for public exhibition by any authority constituted under Section 7 and which, when exhibited, displays the prescribed mark of that authority, and has not been altered or tampered with in any way since such mark was affixed thereto.

(3) Subject to the provisions of this Regulation and to the Rules framed by Our Government, the licensing authority may grant licenses under this Regulation to such persons as it thinks fit and on such terms and conditions and subject to such restrictions as it may determine.

---

whole or any part of a Province other authority for the purposes of this Act."

In the original Bill, the above Section was adopted with the omission of the words "or in a Presidency Town......of Police."

(2) The Select Committee recast the Section as it now stands in the Regulation. They said:—"We are of opinion that, in Municipal areas, the licensing authority should be the Municipal Councils who even now grant licenses under the Municipal Regulation. In other areas, the District Magistrate or such other authority as may be constituted by the Government may be the licensing authority. Whoever may be the authority that may grant the license, that authority has to conform to the provisions of this Regulation and the objects of this enactment will not therefore be defeated."— *S. C. R.*

Sec. 5 : Sub-section (3) of Section 5 in the Indian Act is:—"(3) Subject to the foregoing provisions of this Section, and to the control of the Local Government, the licensing authority may grant......as it may determine."

The above was adopted in the original Bill and approved by the Select Committee. When the Bill was considered by the Council, the wording was changed on the motion of a Non-official Member. In regard to the substitution of the words "Subject to the provisions of this Regulation" for the words "Subject to the foregoing provisions of this Section", he said:—"That would cover probably all aspects of the case, in view of the subsequent amendments to be proposed. It would be more comprehensive and more accurate."

As regards the substitution of the words "rules framed by" for "control of", he said

Punishment for contravention of this Regulation and Rules made thereunder.

6. If the owner or person in charge of a cinematograph uses the same or allows it to be used, or if the owner or occupier of any place permits that place to be used, in contravention of the provisions of this Regulation or the Rules made thereunder, or of the conditions or restrictions upon or subject to which any license has been granted under this Regulation, he shall be punishable, on conviction by a competent Court, with fine which may extend to one thousand rupees and, in the case of a continuing offence, with a further fine which may extend to one hundred rupees for each day during which the offence continues, and his license (if any) shall be liable to be revoked by the licensing authority.

---

that the expression "subject to the control of Government" was very vague. If the Government, through their Chief Secretary, write to the licensing authority, to grant a license, that would be control of Government."

The Official Member in charge opposed the second amendment. He said:—"The provisions of the Bill are intended more or less for policing the exhibitions of cinemas. Some latitude should be given to the Government for controlling the grant of licenses. * *"

Discussion followed, and the Deputy President who presided at the meeting, in distinguishing the wording in the British Indian Act, pointed out:—"India is a continent in itself, and the power of making rules is vested in the Governor-General in Council.Therefore, it may not be possible for the Governor-General in Council to frame the rules for all the Provinces alike. What is suitable to one Province may not be suitable to another. Therefore, they wanted to have some control given to the local Governments. In Travancore, I don't think any such contingency is likely to arise. * * I believe the Regulation and the Rules that may be framed by the Government will be quite enough for the Government to exercise whatever control they may find necessary. * *."— *L. C. P., dated 20-4-1926*.

**Sec. 6**: The original Bill had the following Sub-section:—"(2) If any person is convicted of an offence punishable under this Regulation committed by him in respect of any film, the convicting Court may further direct that the film shall be forfeited to the Government." This was adopted from the Indian Act.

When the Bill was considered by the Council, a motion was made by a Non-official Member to delete the Clause. He said:—

"As a general rule, on conviction, the convicting Court is empowered under this Sub-clause to confiscate the film in respect of which the offence has been committed. My objection to this Sub-clause is of a two-fold nature. The first is that, as a general proposition, I would oppose the punishment of confiscation, for though there are provisions in the Travancore statutes for confiscation of property when some offences specified in that behalf by the statute are committed, it appears to me a very harsh sort of punishment to confiscate the offender's property. It hits more his family than the offender himself. It may be a varying punishment also. For example, under the Forest Regulation, we have got cases where for the simple omission of taking out a license for the transport of timber from one place to another, a confiscation of property worth Rs. 4000 was ordered by a 3rd Class Magistrate in addition to his inflicting all possible punishments that he could on the offender. * *

Under the rule, if the conditions of the license have been transgressed, a perfectly

7. (1) Our Government may, by Notification in Our Government Gazette, constitute a Board consisting of officials and non-officials for the purposes of examining and certifying films as suitable for public exhibition. The certificate of the Board shall be valid in such area as may be specified in the certificate.

Certification of films.

(2) If the Board after examination considers that a film is suitable for public exhibition, it shall grant a certificate to that effect to the person applying for the same and shall cause the film to be marked in the prescribed manner.

(3) If the Board is of opinion that a film is not suitable for public exhibition, it shall inform the person applying for the certificate of its decision and such person may, within thirty days from the date of such information, appeal for a reconsideration of the matter by Our Government, whose decision shall be final.

(4) The District Magistrate may, after recording his reasons in writing, by order, suspend the certificate of any film pending the orders

---

innocent film may be forfeited. That is one aspect of my general objection against the punishment of confiscation. Secondly, on the merits of the Clause itself, it is extremely hazy and iniquitous, for the exhibition of a film may take place not only at the instance of the owner of the film, but at the instance of any other person who may come into possession of such film by means fair or foul. Suppose a lessee holds a film from a lessor; he transgresses a particular license. An offence has been committed in respect of it; or, say, a thief has stolen it and goes to a distant part of Travancore obtains a license from the licensing board and exhibits it and he subsequently transgresses the conditions of the license. If the lessee or the thief is proceeded against by the Criminal Court or ultimately found guilty, is it a punishment for the lessee or the thief to have the film confiscated? They would only be glad and the real owner would be the sufferer.

Sub-clause (2) of Clause 6 runs as follows.—

"If any person is convicted of an offence punishable under this Regulation committed by him in respect of any film, the convicting Court may further direct that the film shall be forfeited to Government."

Now, various persons may be convicted under this Regulation in respect of the exhibition of any particular film, and 'such persons' may also include the owners of houses which are not licensed by the licensing authority for the exhibition of films in their houses. Suppose the owner of the house where a film is exhibited is punished under this Regulation, *in respect of the exhibition of that film* without license, is it reasonable or proper, is it even equitable to confiscate the film over which he has absolutely no proprietary interest whatsoever? When these hazy instances are also tacked under Sub-clause (2), the enactment becomes very hazy, and the real offender who cares nothing for the confiscation of the property is not the real sufferer. For this reason also, I would urge the deletion of this Sub-clause from the Bill."

The Official Member in charge opposed the amendment. A long discussion followed, and finally the Sub-section was omitted.— *L. C. P., dated 20-4 & 23-11-1936.*

of Our Government, and during such suspension the film shall be deemed to be an uncertified film. He shall forthwith forward a copy of his order to Our Government and Our Government may, in their discretion, either discharge his order or by Notification in Our Government Gazette direct that the film shall be deemed to be an uncertified film in the whole or any part of Travancore.

(5) Our Government may, of their own motion, by Notification in Our Government Gazette, direct that a certified film shall be deemed to be an uncertified film in the whole or any part of Travancore.

(6) The exhibition of a film to which any order or direction under Sub-section (4) or (5), is for the time being applicable shall, in the area to which such order or direction relates, be deemed to be a contravention of the condition mentioned in Section 5 (2).

Power to make Rules.

8. (1) Our Government may make Rules for the purpose of carrying into effect the provisions of this Regulation.

(2) In particular and without prejudice to the generality of the foregoing power, Rules under this Section may provide for—

(*a*) the regulation of cinematograph exhibitions for securing the public safety;

(*b*) the procedure of the authorities constituted for examining and certifying films as suitable for public exhibition, and all matters ancillary thereto, and the fees to be levied by those authorities; and

(*c*) any other matter which by this Regulation is to be prescribed.

(3) All Rules made under this Regulation shall be published in Our Government Gazette, and, on such publication, shall have effect as if enacted in this Regulation.

Power to exempt.

9. Our Government may, by order in writing, exempt, subject to such conditions and restrictions as they may impose, any cinematograph exhibition or class of cinematograph exhibitions from any of the provisions of this Regulation or of any Rule made thereunder.

Saving as to cinematograph exhibitions in private dwelling-houses.

10. Notwithstanding anything contained in the foregoing Sections, the provisions of this Regulation shall not apply to any cinematograph exhibition not being of an indecent character given in a private dwelling-house to which the public are not admitted, whether on payment or otherwise.

# REGULATION I OF 1103.

**A Regulation to amend the Hackney Carriage Regulation, VI of 1089,**
*Passed by Her Highness the Maha Rani Regent of Travancore under date the 26th Medam 1103, corresponding with the 8th May 1928, under Section 14 of Regulation II of 1097.*

Whereas it is expedient to amend the Hackney Carriage Regulation, VI of 1089, for the purposes hereinafter appearing; It is hereby enacted as follows :—

**Regn. I of 1103** : I. (1) *Objects and Reasons.*—"When a hackney carriage is licensed under the Hackney Carriage Regulation, the Registering Officer has, under Section 14 (1), to cause the register number of the carriage to be painted on some conspicuous part of the carriage or on a plate to be affixed on some conspicuous part of the carriage. Under that provision, this plate has to be, and is being, supplied by the Registering Officer. Although a fee may be levied when the painting or the plate is renewed under Section 14 (2) of the Regulation, doubts have been felt whether such a fee can be levied at the outset when the painting is done, or the plate supplied, under Sub-section (1). Again, drivers' badges (in metal) have to be supplied, to licensed drivers under Sub-sections (1) and (4) of Section 23 of the Regulation. There is no express provision in the Regulation for recovering the cost of the same. Similarly, fare plates have to be supplied for being affixed on hackney carriages under Bye-law 18 of the Bye-laws passed under the Regulation; and the affixture of such plates on some conspicuous part of the carriage is also necessary in the interests of the public. But there is no express provision authorising the recovery of the cost of such plates.

"2. The cost of supplying the plates of all the classes referred to is not negligible and is sure to increase year by year. In order to enable the cost being recovered from the parties concerned, the appropriate Sections of the Regulation are sought to be amended by this Bill."— *S, O & R.*

(2) In introducing the Bill, the Official Member in charge said :—

"The Hackney Carriage Regulation was passed with a view to control and license the hackney carriages as well as their drivers. Under the provisions in the Regulation and the bye laws passed thereunder, when a hackney carriage is licensed, a number-plate has to be affixed to the carriage to show the register number of the carriage and, when a driver is licensed, he has to be given a driver's badge. Further, under the bye-laws, a fare-plate showing the authorised fares for the carriages from one place to another has also to be affixed in the carriages themselves. These three things, *viz.*, the number-plates, the drivers' badges and the fare-plates cost some money to the Government. The Regulation does not expressly provide for the realisation of the cost of these plates from the owners of the hackney carriages. This Bill is introduced with a view to enable the Government to realise the cost of these plates, which is estimated to be seven Chackrams each on an average, from the parties to whom these are granted. This is the principle of the Bill in brief.

Coming to certain details, I may bring to the notice of the Council that Section 14 of the Regulation authorises the numbering of

hackney carriages and I shall read that Section for the information of the House :—

"14. (1) Upon the registration of any hackney carriage, the Registering Officer shall cause to be painted on some conspicuous part of the carriage or on a plate to be affixed on some conspicuous part of the carriage its number in the register and the number of passengers it is licensed to carry.

(2) If the words or figures so painted become indistinct or are obliterated during the term of the license, the owners of the carriage shall be bound to produce it before the Registering Officer and apply to have such words or figures renewed. If the plate so affixed shall have been lost or stolen, the owners of the carriage shall be bound to apply to the Registering Officer to have a new plate affixed. The charge for such painting or new plate shall be seven chackrams."

I am not quite sure whether the above provision was not intended to apply to the plates first supplied as well as to the plates that may be supplied afterwards. However, the cost of the plate will be about seven Chackrams, and the amendment that I propose to make in regard to this Section is practically to transfer the last sentence of Sub-section (2) into a new Sub-section so that the provision relating to the levy of seven Chackrams may apply to the plates originally issued, as well as to those issued afterwards.

In regard to the drivers' badges, Section 23 says :

"(1) The Registering Officer shall, at the time of granting a license to any driver of a hackney carriage, furnish him with a metal badge punched or marked with the number of his license."

* * * *

And later on, Sub-section (4) says :—

"(4) Whenever the number on any badge becomes indistinct or is obliterated during the term of the license, and also whenever any badge is lost or stolen, the person to whom the license relating to any such badge has been granted shall deliver such badge or notify its loss and shall produce such license to the Registering Officer and such person shall then be entitled to have a new license and badge delivered to him upon payment of half the fee mentioned in Section 18. Such new license shall be in force for the year of registration."

* * * *

Here also, it will be noticed that nothing is mentioned as to the cost of the badge to be supplied to the driver. Under the Regulation a doubt has arisen as to whether the badge should be supplied at the cost of the Government or not. * *

Then, what Section 30 says is this:—

"(1) The owner or driver of every hackney carriage may demand and receive for the hire of such carriage such fares as may be fixed and published by the Registering Officer, with the sanction of Our Government duly notified.

Provided that any agreement entered into to accept a fare lower than the fare so fixed shall be binding."

In bye-law 18, it is laid down—

"An abstract of the fares printed on enamelled plates shall be affixed under the orders of the Registering Officer in a conspicuous place in each hackney carriage after such carriage has been licensed."

So, a fare-plate has to be affixed to each carriage when it is licensed. But nothing is mentioned as to the cost of the plate and from whom it has to be recovered. If this Section is construed literally, it would mean that the Government have to pay for these plates. It is only reasonable and proper that when any Department of Government is called upon to do any service to any party, the Government should get the value of the service rendered. The plates do cost some money, which is not negligible, and I hope the House will accept the principle of the Bill."—*L. C. P., dated 29-7-1927.*

## REGULATION I OF 1103.

Short title and commencement.

**1.** This Regulation may be called the Hackney Carriage (Amendment) Regulation, 1103, and it shall come into force at once.

Amendment of Section 14.

**2.** In Section 14 of the Hackney Carriage Regulation, VI of 1089, (hereinafter referred to as "the said Regulation") the last sentence in Sub-section (2) shall be omitted and the following shall be inserted as Sub-section (3), namely :—

Charge for the painting or plate.

"(3) The fee for the painting or the plate, done or supplied under Sub-section (1) or Sub-section (2) shall be seven Chackrams, payable to the Registering Officer."

Amendment of Section 32.

**3.** In Section 32 of the said Regulation, after Sub-section (3), the following Sub-sections shall be inserted, namely :—

Fare plates.

"(4) The Registering Officer shall also cause an abstract of the fares referred to in Sub-section (1) to be prepared in English and the Vernacular language of the place and printed on enamelled plates and such plates shall be issued to applicants on payment of a fee of seven Chackrams for each plate.

Fare plates to be affixed on carriages.

(5) Every hackney carriage shall have such a plate affixed, and, as often as any portion of the printing on any such plate becomes indistinct or obliterated, re-affixed on a conspicuous part of the carriage in accordance with the directions of the Registering Officer.

Penalty for plying for hire without fare plate.

(6) If any hackney carriage stands or plies for hire without such a plate affixed or re-affixed as required by Sub-section (5), the owner and driver thereof shall be punishable with fine not exceeding twenty rupees."

---

II. The Bill was published in the Gazette dated 2-11-1926. It was introduced and referred to a Select Committee on 29-7-1927 (*L. C. P., Vol. XI, Pp. 28-31*). The Select Committee's Report was presented to, and considered by, the Council on 2-12-1927 (*L. C. P., Vol. XII, Pp. 148-154*). The Report was not published, as the Committee thought that the Bill had not been so altered as to require re-publication. For the Report, see L. C. P. Vol. XII. The Bill was finally read and passed on 16-4-1928 (*L. C. P., Vol. XII, P. 454*). The Regulation was published in the Gazette dated 15-5-1928.

# IRRIGATION REGULATION AMENDMENT

## REGULATION II OF 1103.

**A Regulation further to amend the Irrigation Regulation, III of 1072, as amended by Regulations VI of 1090 and V of 1097,**

*Passed by Her Highness the Maha Rani Regent of Travancore under date the 26th Medam 1103, corresponding with the 8th May 1928, under Section 14 of Regulation II of 1097.*

Whereas it is expedient further to amend the Irrigation Regulation, III of 1072, as amended by Regulations VI of 1090 and V of 1097, for the purposes hereinafter appearing; It is hereby enacted as follows :—

---

**Regn. II of 1103** : I. (1) *Objects and Reasons.*—"Section 23 of the Irrigation Regulation of 1072 provides that 'whenever, by local custom, any work for purposes of agriculture should be done by the joint labour or cost of the proprietors of all the lands benefited by such work, if any of such proprietors fails or neglects to do his share of the work or contribute his share of the cost or labour ', the Peishkar or any Officer authorised in that behalf may investigate the matter and pass such order as he deems fit. The Section further provides that, if that order directs a defaulting proprietor to execute a portion of any work and if such defaulting proprietor fails to execute it, the estimated cost of the work directed to be done may be recovered from the defaulter as arrears of land revenue. But the order passed by the Peishkar or other Officer need not always be one to do any specific portion of a work. It may also be, as very often it has to be, to contribute a portion of the cost involved in a work that ought to be done by joint cost as, for example, when the Peishkar has to order one of the many proprietors of a *punja padom* to pay a rateable portion of the cost incurred by the others in draining the entire *padom* of the water in it. In such cases, the Section does not lay down how the amount ordered by the Peishkar or other Officer to be paid by the defaulting proprietor is to be recovered. This Bill is therefore framed to authorise the recovery, by the Revenue Recovery processes, of such and other amounts ordered to be paid under the provisions of the Section. Occasion has been taken also to make it explicit that the Peishkar or other Officer may pass orders directing the payment of any portion of the cost involved in a work".— *S. O & R.*

(2) In introducing the Bill, the Official Member in charge said :—

"I shall now briefly explain the object of the Bill. The object is simple. But it may require some explanation. I shall begin with explaining the object of Section 23 itself, that is, the Section that is now sought to be amended. In Travancore, as elsewhere, agricultural lands lie in one block very commonly and these blocks are cultivated by their proprietors jointly. This is a common feature in Travancore and a very illustrative case may be cited in the cultivation of *punja* lands in Kuttanad. These fields lie without any apparent boundary marks and lie contiguous to one another. Two of the most important works to be done in the cultivation of these are, one, the putting up of ring bunds and two, the draining off of the water in these fields. As is probably known to all the members of the House, the ring bunds are put up by the joint efforts of all the cultivators and all of them benefit thereby. It is put on their joint cost and joint labour. The water also is drained by the proprietors jointly. To say

that one proprietor may put up the bund himself and drain the water himself so far as his own field is concerned, is very inequitable. To do so, is very much more than to put it himself and others together. Therefore, in practice, all these works are done jointly. Where there are a number of proprietors and one of them is unwilling to contribute his share of the cost of putting up the bund or draining the water, leaving to the other proprietors to put up the bund or drain the water and incur the cost themselves, the question may arise as to whether the cost may not be recovered from the recalcitrant. No doubt, it may be said that they need put up the bund only around their own lands. But that is not the practice and that will cost more than if it were done for the recalcitrant owners' lands also. If thus bunds are put up by the others and the water is drained, naturally, the field of the recalcitrant will also be benefited. That is to say, the benefit thereof goes to the recalcitrant owner too. Section 23 lays down that when any of the proprietors fails or neglects to do his share of the work which ought to have been done by joint cost or joint labour and when the other owners are obliged to put the bund or drain the water, then the Division Peishkar or any other officer, specially authorised in this behalf, may make such order as he thinks fit. The Section further lays down that the Dewan Peishkar may himself execute the work and recover the cost. It will be noticed from Section 23 that there is a fundamental difference between the two sorts of works, *viz.*, the putting up of the bund and the draining of the water. If there is 10,000 running feet of bund to be put up, one owner may take 2,000 feet, another 1,000, another 3,000 and so on. But in the case of draining water, it is not possible to say that one proprietor should drain so much of the water. Because of this difference, we can only say how the cost will have to be apportioned. Therefore two different provisions are necessary. Section 23 lays down only that if any recalcitrant owner fails to do a definite share of the work, that work may be carried out under the orders of the Division Peishkar, but it is silent as to what the proprietor or the recalcitrant owner should pay in the other case. It may be that Rs. 10,000 will be required for draining the water. But what is the share of the cost he is to pay? It is true an order may be passed by the Division Peishkar under Section 23 for apportioning the cost of draining the water; but it does not lay down expressly how that proportion of money may be recovered from the recalcitrant proprietor. The object of this amendment therefore is to make it clear that such money also may be recovered from the defaulting proprietor under the Revenue Recovery Regulation. With this explanation, if the members of the House will kindly read the Section as would be amended, which I have caused to be printed and circulated, they will see the purport of the amendment. Section 23 reads thus:

'23. Whenever, by local custom, any work for purposes of agriculture should be done by the joint labour or cost of the proprietors of all the lands benefited by such work, if any of such proprietors fails or neglects to do his share of the work or contribute his share of the cost or labour, it shall be lawful for the Division Peishkar or any officer specially authorised in this behalf, on the application of a reasonable number of proprietors interested in such work or injured by such failure or neglect, to investigate the matter and pass such order as he deems fit' etc.

Thus, it will be noticed that two classes of work are referred to in the first portion of the Section, namely, work done by joint labour and by joint cost. The second part then runs thus:

'If the order directs that the defaulting proprietor shall execute a portion of the work, it shall distinctly specify the portion of the work to be executed, the time within which it should be done and the estimated cost of such work. On the defaulting pro-

## IRRIGATION (AMENDMENT) REGULATION II OF 1103.

Short title and commencement.

**1.** This Regulation may be called the Irrigation (Amendment) Regulation, 1103, and it shall come into force at once.

Amendment of Section 23.

**2.** In Section 23 of Irrigation Regulation, III of 1072, as amended by, Regulations VI of 1090 and V of 1097—

(*a*) in the first sentence, the following shall be added at the end, namely—

"and may also, by such order, direct the defaulting proprietor to execute any portion of the work or pay any portion of the cost of the work," and

(*b*) after the third sentence, the following shall be added, namely,—
"Any sum of money ordered to be paid under the provisions of this Section may also be recovered from the defaulting proprietor as arrears of land revenue and the amount so recovered paid to the party entitled to it."

---

prietor refusing or failing to execute the work within the time prescribed in the order, the cost of the work may be recovered from such defaulter, as arrears of land revenue and the work executed under the orders of the Division Peishkar or such officer as aforesaid'.

This refers to the case where the work itself has to be done in specific shares. But the Section is silent in regard to works which have to be done as a whole, the cost alone being apportioned. The Section as it stands would apply to the case of putting up a ring bund. But it will not apply to the case of the draining of the water. Therefore, I have added at the end in the Section the necessary amendments. At the end of the first part of the Section, the following may be added :—

'*and may also, by such order, direct the defaulting proprietor to execute any portion of the work or pay any portion of the cost of the work*'.

At the end of the second portion the following has to be added :—

'*Any sum of money ordered to be paid under the provisions of this Section may also be recovered from the defaulting proprietor as arrears of land revenue and the amount so recovered paid to the party entitled to it*'. * *" *L. C. P., dated 29-7-1927.*

II. The Bill was published in the Gazette dated 26-10-1926. It was introduced and referred to a Select Committee on 29-7-1927 (*L. C. P., Vol. XI, Pp. 32-42*). The Select Committee's Report was presented to, and considered by, the Council on 6-12-1927 (*L. C. P., Vol. XII, P. 360*). The Report was not published in the Gazette, as it was thought that it did not require republication. The Bill was finally read and passed on 6-4-1928 (*L. C. P., Vol. XII, P. 454*). The Regulation was published in the Gazette dated 15-5-1928.

# REGULATION III OF 1103.

## THE TRAVANCORE MINES AND MINERALS REGULATION.

CONTENTS.


Preamble.

CHAPTER I.

**Preliminary.**

Sections

| | | |
|---|---|---|
| 1. | Short title, extent and commencement ... ... | 1 |
| 2. | Definitions ... ... | 3 |

CHAPTER II.

**Prospection for Metals and Minerals.**

3. Notice before prospecting land not belonging to Government.
4. Payment of compensation.
5. Power of Government to make Rules.

CHAPTER III.

**Inspectors.**

| | | |
|---|---|---|
| 6. | Inspectors ... ... | 4, 5 (2) |
| 7. | Powers of District Magistrates ... ... | 4 (3) |
| 8. | Powers of Inspector of Mines ... ... | 6 |
| 9. | Powers of special Officer to enter, measure, etc. ... | 7 |
| 10. | Facilities to be afforded to Inspectors ... ... | 8 |
| 11. | Information acquired to be regarded as strictly confidential ... ... | 9 |


The figures on the right refer to the corresponding Sections of the Indian Act IV of 1923.

CHAPTER IV.

## Mining Operations and Management of Mines.


| Sections | | | | |
|---|---|---|---|---|
| **12.** | Notice regarding Mines | ... | ... | 14 |
| **13.** | Managers | ... | ... | 15 |
| **14.** | Duties and responsibilities of owners, agents and managers | ... | ... | 16 |


CHAPTER V.

## Provisions as to Health and Safety.


| | | | | |
|---|---|---|---|---|
| **15.** | Conservancy | ... | ... | 17 |
| **16.** | Medical appliances | ... | ... | 18 |
| **17.** | Powers of Inspectors when causes of danger not expressly provided against exist or when employment of persons is dangerous | ... | ... | 19 |
| **18.** | Notice to be given of accidents | ... | ... | 20 |
| **19.** | Power of Government to appoint court of inquiry in cases of accidents | ... | ... | 21 |
| **20.** | Publication of reports | ... | ... | 22 |


CHAPTER VI.

## Hours and Limitation of Employment.


| | | | | |
|---|---|---|---|---|
| **21.** | Hours of employment | ... | ... | 23 |
| **22.** | Supervising staff | ... | ... | 24 |
| **23.** | Exemption from provisions regarding employment | | ... | 25 |
| **24.** | Restriction as to women and children | ... | ... | 26 |
| **25.** | Restriction as to the employment of women | | | |
| **26.** | Disputes as to age | ... | ... | 27 |
| **27.** | Register of employees | ... | ... | 28 |


CHAPTER VII.

## Rules and Bye-laws.


| | | | | |
|---|---|---|---|---|
| **28.** | Power of Government to make Rules | ... | ... | 29, 30 |
| **29.** | Prior publication of Rules | ... | ... | 31 |
| **30.** | Bye-laws | ... | ... | 32 |
| **31.** | Posting up of extracts from Regulation and Rules | | ... | 33 |

## REGULATION III OF 1103.

### CHAPTER VIII.

### Penalties and Procedure.

Sections


| | | |
|---|---|---|
| 32. | Obstruction ... ... | 34 |
| 33. | Falsification of records, etc. ... ... | 35 |
| 34. | Omission to furnish plans, etc. ... ... | 36 |
| 35. | Contravention of provisions regarding employment of labour ... ... | 37 |
| 36. | Notice of accidents ... ... | 38 |
| 37. | Disobedience of orders ... ... | 39 |
| 38. | Contravention of law with dangerous results ... ... | 40 |
| 39. | Prosecution of owner, agent or manager ... ... | 41 |
| 40. | Limitation of prosecution ... ... | 42 |
| 41. | Cognisance of offences ... ... | 43 |
| 42. | Reference to commission in lieu of prosecution in certain cases ... ... | 44 |


### CHAPTER IX.

### Miscellaneous.


| | | |
|---|---|---|
| 43. | Power to exempt from operation of Regulation ... | 46 |
| 44. | Power to alter or rescind orders ... ... | 47 |
| 45. | Saving ... ... | 49 |
| 46. | Acquisition of land. | |


**A Regulation to provide for the Regulation and Inspection of Mines and for the prospecting for Metals and Minerals**

*Passed by Her Highness the Maha Rani Regent of Travancore, under date the 26th Medam 1103, corresponding with the 8th May 1928, under Section 14 of Regulation II of 1097.*

Whereas it is expedient to provide for the Regulation and Inspection of Mines and for the prospecting for Metals and Minerals: It is hereby enacted as follows :—

---

**Regn. III of 1103: I. (1)** *Objects and Reasons.*—

"1. The objects of this Regulation are:—(a) to enable prospecting for minerals in the State,

(b) the regulation of labour in mines, and

(c) the inspection of mines.

Though the mines in actual working now are only surface mines, where elaborate precautions may not be necessary to safeguard the interests of the labourers so as to insure their health and safety, there wer[illegible] other mines in existence before, the wo[illegible]ing of which cannot be said to have [illegible] the[illegible] abandoned, and other min[illegible] [illegible]ght [illegible]lso."—*S. C. R.*

into existence, where regulating labour was and might become necessary. There is no statute in force enabling the Government to safeguard the interests of labour and of lessees of mines. In British India the first Act passed in relation to mines was replaced by Act No. IV of 1923. The provisions and principles of the Act have been adopted in so far as they are applicable in Travancore.

"2. No notes on clauses are deemed useful. It may, however, be pointed out that payment of compensation is provided for in case any damage might be caused by prospecting in land belonging to private individuals. Power is also taken to acquire land or any limited interest in land either permanently or for any limited time, when such acquisition is found necessary, to avoid likelihood of damage to ownership of surface rights or to enable the successful working of a mine. Provision is made for payment of adequate compensation which might be fixed either by agreement or by the decision of a District Court, subject to appeal to the High Court. It is not desirable that the Land Acquisition Regulation should apply to such limited methods and extent of acquisition, and no definition of what might be regarded as adequate compensation in such cases is attempted, in order that the Courts may so frame the decision in each individual case as to accord with the equities of such case."— *S. O & R.*

(2) In introducing the Bill, the Official Member in charge said :—

"I understand that there are seven mines ; but some of them are not working though they may be worked again. It is also necessary that there should be provision to enable the Government or its servants to prospect for minerals on private grounds. As it is, it is only with the consent of a private person that entry may be made in a private compound. No prospecting for minerals could be done at present in private lands. It has led to considerable difficulties and it has not always been possible to get the owner's permission to his land for the purpose of prospecting for minerals. According to the Bill, any Government Officer may enter upon any land for prospecting for minerals. Provision for the payment of sufficient compensation for any damage done to the land has also been made. In cases of difficulty, reference may be made to a Board which is to decide the amount of compensation finally. And thus provision may be made so as to regulate labour and to safeguard the health and safety of the labouring classes. The other provision is the Chapter regulating the penalty for non-obedience of the various Chapters in the Bill, while the last Chapter deals with the rules to be framed by the Government. The Bill is a simple one and I do not think it is likely to be contentious." * * *

"The Bill does not attempt to confirm ownership of mines at all. If the ownership vests in the Government now, it will be so even after the Bill is passed. If the ownership of mines vests in a private individual, it will continue to do so even after the present Bill is passed ; so that it has nothing to do whatsoever with the ownership. The first portion of the Bill is purely about prospecting and nothing else. Whether a mine belongs to a private individual or to the Government, it is absolutely necessary that the Department of Geology should prospect for minerals on private gardens and private lands and for that purpose enter upon and make the necessary excavation, etc., in them. A question was asked whether there was any objection on the part of any particular individual. There may or may not be objection. Once you begin to make excavations, there may be serious objections. The only safeguard necessary is that, whatever loss or damage accrued to the party, it should be sufficiently compensated for by the Government interfering with the ownership of land. That has been provided for."—

*L. C. P., dated 4-6-1924.*

II. The Bill was published in the Gazette dated 25-3-1924. It was introduced in the

## CHAPTER I.

### Preliminary.

1. (1) This Regulation may be called "The Travancore Mines and Minerals Regulation".

Short title, extent and commencement.

(2) It extends to the whole of Travancore.

(3) It shall come into force at once.

2. (1) In this Regulation, unless there is anything repugnant in the subject or context—

Definitions.

(a) "Agent", when used in relation to a mine, means any person appointed or acting as the representative of the owner in respect of the management of the mine or of any part thereof, and, as such, superior to a manager under this Regulation:

(b) "Child" means a person under the age of fourteen years:

(c) A person is said to be "employed" in a mine who works, under appointment by, or with the knowledge of, the manager, whether for wages or not, in any mining operation, or in cleaning or oiling any part of any machinery used in or about the mine, or in any other kind of work whatsoever incidental to, or connected with, mining operations:

---

Council and referred to a Select Committee on 4-6-1924 (*L. C. P., Vol. IV, Pp. 819-832*) and 3-11-1925 (*L. C. P., Vol. VIII, Pp. 146-147*). The Committee's Report was published in the Gazette dated 27-7-1926. It was presented to, and considered by, the Council on 26 & 27-4-1926. (*L. C. P., Vol. X, Pp. 469—491, 529—588*), 30-11 and 2-12-1927 (*L. C. P., Vol. XII, Pp. 73-79, 114-148*). The Bill was finally read and passed on 16-4-1928 (*L. C. P., Vol. XII, Pp. 452-454*). The Regulation was published in the Gazette dated 15-5-1928.

*Preamble*: The Indian Act provides for the regulation and inspection of mines. The Regulation has added the words "and for the prospecting of metals and minerals"; and a separate Chapter—(II), not found in the Indian Act, has been inserted to provide for prospecting. See Statement of Objects and Reasons, *Supra*.

**Sec. 2** (1) (*b*): In the Indian Act, a child means a person under the age of *thirteen* years. This definition was adopted in the original Bill. The Select Committee, in reporting on the Bill, substituted "fourteen" for "thirteen". They said :—"A child is defined in the Travancore Factories Regulation as a person under the age of fourteen years. The same may be adopted for the purposes of this enactment also."—*S. C. R.*

(*d*) "Gazette" means the Travancore Government Gazette:

(*e*) "Inspector" means an Inspector of Mines appointed under this Regulation and includes a District Magistrate when exercising any power or performing any duty of an Inspector which he is empowered by this Regulation to exercise or perform:

(*f*) "Mine" means any excavation whether subterranean or not, where any operation for the purpose of searching for, or obtaining, minerals has been or is being carried on, and includes all works, machinery, tramways and sidings, whether above or below ground, in or adjacent to or belonging to a mine:

Provided that it shall not include any part of such premises on which a manufacturing process is being carried on, unless such process is a process for coke-making or the dressing of minerals:

(*g*) "Owner", when used in relation to a mine, means any person to whom a lease or license is given by the Government to work a mine or to prospect for metals or minerals and includes a contractor who may be engaged to do any work or part of it:

(*h*) "Prescribed" means prescribed by Rules made under this Regulation:

(*i*) "Qualified medical practitioner" means any person declared by the Government by Notification in the Gazette to be a qualified medical practitioner for the purposes of this Regulation:

---

**Sec. 2 (1) (*f*):** The original Bill adopted the definition in the Indian Act which does not contain the words "whether subterranean or not." These words were inserted by the Select Committee.

**Sec. 2 (1) (*g*):** The Indian Act defines the term thus:—" 'Owner', when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof, but does not include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine subject to any lease, grant or license for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine; but any contractor for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability."

(j) "Serious bodily injury" means any injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb, or the permanent loss of or injury to the sight or hearing, or the fracture of any limb or the enforced absence of the injured person from work for a period exceeding twenty days:

(k) "Week" means the period between midnight on Saturday night and midnight on succeeding Saturday night.

(2) (a) For the purposes of this Regulation the expression "mineral" shall not include common sand, common clay, laterite, or gravel.

(b) Our Government may, by Rules made from time to time, declare any substance to be not a mineral for the purposes of this Regulation.

---

Sec. 2 (2): This Sub-section is not found in the Indian Act. It was not in the original Bill. When the Bill was considered by the Council, the Sub-section was added on the motion of the Official Member in charge who said:—

"When the definition of 'mine' was in debate in this House, I drew the attention of this House to the fact that the main object of the Government in passing this Regulation was to regulate the labour conditions. The proprietory right over the minerals was already dealt with by another enactment, the Minerals Proclamation and we are not concerned with that in this Bill. Our dominant object is to provide for labour conditions. Therefore it was necessary to give a wide import to the term "Minerals" and thereby also to "Mines." Restrictions imposable on mines in general may, it was feared, be imposed on quarries from which clay and laterite are quarried. I gave an assurance that such matters may be excluded from the term 'minerals' and therefore such quarries from "mines" too. * If the main object of the Bill is to regulate labour conditions then granite cannot be excluded. In the working of granite, blasting may be necessary and the breaking of granite blocks into blue metal may have to be done. The conditions of labour in these operations are not always such as should be left without control. Therefore I did not want to exclude granite from the category of minerals. If that is excluded, then granite quarry can never be a mine. Then women and children can go and work there and Government can exercise no restriction there. * *

"The House apprehended that if mineral is not defined, then clay and laterite quarries will also go into the category of mines and Government would impose restrictions thereon. Therefore I agreed that I would bring in an amendment. It will be dangerous to exclude granite from "minerals." If a granite quarry can never be a mine, then none of the conditions and restrictions imposed by this Bill will apply.

I have put in another clause, Clause (b) to say that Government may exclude any substance from being classed as mineral."—

*L. C. P., dated 2-12-1927.*

## CHAPTER II.

### Prospection for Metals and Minerals.

Notice before prospecting land not belonging to Government.

3. (1) Whenever it appears to any officer of the Government appointed in this behalf that any metal or mineral may be found beneath the surface of any land, which is not land belonging to the Government, and that the examination of the sub-soil in such land is necessary or desirable, such officer shall give notice, in the manner prescribed, of his intention to survey the land and examine the sub-soil.

(2) It shall be lawful to the officer who gives notice under Sub-section (1) at any time after fourteen days of the date of such notice—

(*a*) to enter upon and survey such land;

(*b*) to dig or bore into the sub-soil, and to take samples of such sub-soil;

(*c*) to place marks, and cut trenches, and where necessary to cut down and clear away any part of any standing crop, fence or jungle;

(*d*) to do all other acts necessary to ascertain the existence and extent of any metal or mineral believed to exist in such land.

(3) The acts referred to in Sub-section (2) may be performed either by the officer who gives notice, or such other person whom he authorises in writing to perform such acts.

Payment of compensation.

4. (1) The officer mentioned in Section 3 shall, at the time of such entry, pay or tender payment for any damage which may be done by the acts aforesaid; and in case of dispute as to the sufficiency of the amount so tendered, he shall at once refer the dispute to the decision of the Dewan Peishkar of the Divison in which the land is situate and shall forward with his reference a written statement of the particulars of the damage anticipated and of the amounts tendered in respect of each of such particulars. The Dewan Peishkar or, if so authorised by him, any Division Assistant or Tahsildar subordinate to him shall adjudge the amount of the compensation and payment shall be made accordingly.

---

*Chapter II*: See note under Preamble.

(2) Nothing in this Section shall debar any party dissatisfied with the amount adjudged as hereinbefore provided for from suing in Our Civil Courts for the determination and decree of a proper amount of compensation in respect of the damage anticipated at the time of the tender or in respect of any damage not so anticipated.

Power of Government to make Rules.

5. The Government may make Rules—

(a) as to the mode of service of notice under Section 3;

(b) the mode of enquiry to be made in cases of reference under Section 4; and

(c) generally to carry out the provisions of this Chapter.

---

CHAPTER III.

## Inspectors.

Inspectors.

6. (1) The Government may, by Notification in the Gazette, appoint a duly qualified person to be the Inspector of Mines throughout Travancore.

(2) The Inspector of Mines appointed under this Section shall be deemed to be a public servant within the meaning of the Travancore Penal Code.

(3) No person shall be appointed to be an Inspector or having been appointed shall continue to hold such office who is or becomes directly or indirectly interested in any mine or mining right in Travancore.

(4) When Rules are made under this Regulation, the Inspector shall give information to owners, agents and managers of mines as to any Rules which concern them respectively, and as to the places where copies of such Rules may be obtained.

Powers of District Magistrates.

7. The District Magistrate may exercise the powers and perform the duties of an Inspector subject to the general or special orders of Government:

Provided that nothing in this Section shall be deemed to empower a District Magistrate to exercise any of the powers conferred by Section 17 or Section 30.

Powers of Inspector of Mines.

8. The Inspector may—

(a) make such examination and enquiry as he thinks fit, in order to ascertain whether the

provisions of this Regulation and of the Rules and bye-laws and of any orders made thereunder are observed in the case of any mine;

(b) with such assistants (if any) as he thinks fit, enter, inspect and examine any mine or any part thereof at all reasonable times by day or by night, but not so as unreasonably to impede or obstruct the working of the mine;

(c) examine into and make inquiry respecting the state and condition of any mine or any part thereof, the ventilation of the mine, the sufficiency of the bye-laws for the time being in force relating to the mine and all matters and things connected with or relating to the safety of the persons employed in or about the mine.

Powers of special Officer to enter, measure, etc.

9. Any person in the service of the Government duly authorised by a special order in writing of the Inspector in this behalf may, for the purpose of surveying, levelling, or measuring in any mine, after giving not less than three days' notice to the manager of such mine, enter the mine, and may survey, level or measure the mine or any part thereof at any reasonable time by day or night, but not so as unreasonably to impede or obstruct the working of the mine.

Facilities to be afforded to Inspectors.

10. Every owner, agent and manager of a mine shall afford the Inspector and every person authorised under Section 9 all reasonable facilities for making an entry, inspection, survey, measurement, examination or inquiry under this Regulation.

Information acquired to be regarded as strictly confidential.

11. (1) All copies of, and extracts from, registers or other records appertaining to any mine, and all other information acquired by the Inspector or by any one assisting him, in the course of an inspection of any mine under this Regulation, or acquired by any person authorised under Section 9, shall be regarded as strictly confidential.

---

Sec. 11: In the Indian Act, the wording at the end of Sub-section (1) is:—"in the exercise of his duties thereunder, shall be regarded as confidential."

(2) If the Inspector or any person referred to in Sub-section (1) discloses, to any one other than a Magistrate or an officer to whom he is subordinate, any such information as aforesaid without the consent of the Government, he shall be punished with imprisonment which may extend to six months and shall also be liable to fine.

(3) No Court shall proceed to the trial of any offence under this Section except on complaint made by order of, or under authority from, the Government or made by a person aggrieved by the offence.

---

## CHAPTER IV.

### Mining Operations and Management of Mines.

Notice regarding mines.

12. The owner, agent or manager of a mine shall in the case of an existing mine within one month from the commencement of this Regulation or in the case of a new mine within three months after the commencement of mining operations give to the District Magistrate of the district in which the mine is situated notice in writing in such form and containing such particulars relating to the mine as may be prescribed.

Managers.

13. (1) Save as may be otherwise prescribed, every mine shall be under one manager who shall have the prescribed qualifications and shall be responsible for the control, management and direction of the mine and the owner or agent of every mine shall appoint himself or some other person having such qualifications to be such manager.

(2) if any mine is worked without there being a manager for the mine as required by Sub-section (1), the owner and agent shall each be deemed to have contravened the provisions of the Section.

Duties and responsibilities of owners, agents and managers.

14. (1) The owner, agent and manager of every mine shall be responsible that all operations carried on in connection therewith are conducted in accordance with the provisions of this Regulation and of the Rules and bye-laws and of the orders made thereunder.

(2) In the event of any contravention of any such provisions by any person whomsoever, the owner, agent and manager of the mine shall each be deemed also to be guilty of such contravention unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing those provisions, to prevent such contravention:

Provided that the owner or agent shall not be so deemed if he proves—

(*a*) that he was not in the habit of taking, and did not in respect of the matter in question take, any part in the management of the mine;

(*b*) that he had made all the financial and other provisions necessary to enable the manager to carry out his duties; and

(*c*) that the offence was committed without his knowledge, consent or connivance.

(3) Save as hereinbefore provided, it shall not be a defence in any proceedings brought against an owner or agent of a mine under this Section that a manager of the mine has been appointed in accordance with the provisions of this Regulation.

---

## CHAPTER V.

## Provisions as to Health and Safety.

Conservancy.

15. There shall be provided and maintained for every mine, latrine and urinal accommodation of such kind and on such scale, and such supply of water fit for drinking, as may be prescribed.

Medical appliances.

16. At every mine in respect of which the Government may, by Notification in the Gazette, declare this Section to apply, such supply of ambulances or stretchers, and of splints, bandages and other medical requirements, as may be prescribed, shall be kept ready at hand in a convenient place and in good and serviceable order.

Powers of Inspectors when causes of danger not expressly provided against exist or when employment of persons is dangerous.

17. (1) If, in any respect which is not provided against by any express provision of this Regulation or of the Rules or bye-laws or of any orders made thereunder, it appears to the Inspector that any mine, or any part thereof or any matter, thing or practice in or connected with the mine, or with the control, management or direction thereof is dangerous to human life or safety, or defective so as to threaten, or tend to, the bodily injury of any person, he may give notice in writing thereof to the owner, agent or manager of the mine, and shall state in the notice the particulars in which he considers

the mine or part thereof, or the matter, thing or practice, to be dangerous or defective and require the same to be remedied within such time as he may specify in the notice.

(2) If the Inspector is of opinion that there is urgent and immediate danger to the life or safety of any person employed in any mine or part thereof, he may, by an order in writing containing a statement of the grounds of his opinion, prohibit, until the danger is removed, the employment in or about the mine or part thereof of any person whose employment is not in his opinion reasonably necessary for the purpose of removing the danger.

(3) The Inspector making a requisition under Sub-section (1) or an order under Sub-section (2) shall forthwith report the same to the Government and shall inform the owner, agent or manager of the mine that such report has been so made.

(4) If the owner, agent or manager of a mine objects to the requisition made under Sub-section (1) or to an order made by the Inspector under Sub-section (2), he may, within twenty days after the receipt of the notice containing the requisition or of the order as the case may be, send his objection in writing, stating the grounds thereof, to the Government. The Government may either of their own accord or on the report of the commission that may be appointed for the purpose dispose of the objection.

(5) Every requisition made under Sub-section (1) or order made under Sub-section (2) shall be complied with pending the receipt at the mine of the decision of Government :

Provided that the Government may, on the application of the owner, agent or manager, suspend the operation of a requisition under Sub-section (1) pending its decision.

(6) Nothing in this Section shall affect the power of a Magistrate under Section 127 of the Criminal Procedure Code.

Notice to be given of accidents.

**18.** When any accident occurs in or about a mine causing loss of life or serious bodily injury, or when an accidental explosion, ignition, outbreak of fire or irruption of water occurs in or about a mine, the owner, agent or manager of the mine shall give such notice of the occurrence to such authorities and in such form, and within such time, as may be prescribed.

Power of Government to appoint Court of inquiry in cases of accidents.

19. (1) When any accidental explosion, ignition, outbreak of fire or irruption of water or other accident has occurred in or about any mine, the Government, if they are of opinion that a formal inquiry, into the causes of and circumstances attending the accident, ought to be held, may appoint a competent person to hold such inquiry; and may also appoint any person or persons possessing legal or special knowledge to act as assessor or assessors in holding the inquiry.

(2) The person appointed to hold any such inquiry shall have all the powers of a Civil Court under the Code of Civil Procedure, 1100, for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects; and every person required by such person as aforesaid to furnish any information shall be deemed to be legally bound to do so within the meaning of Section 169 of the Travancore Penal Code.

(3) Any person holding an inquiry under this Section may exercise such of the powers of the Inspector under this Regulation as he may think it necessary or expedient to exercise for the purposes of the inquiry.

(4) The person holding an inquiry under this Section shall make a report to the Government stating the causes of the accident and its circumstances, and adding any observations which he or any of the assessors may think fit to make.

Publication of reports.

20. The Government may cause any report submitted by the commission under Section 17 or by a Court of inquiry under Section 19 to be published at such time and in such manner as they may think fit.

---

## CHAPTER VI.

### Hours and Limitation of Employment.

Hours of employment.

21. No person shall be employed in a mine—

(a) on more than six days in any one week,

(b) if he works above ground, for more than fifty-four hours in any one week,

---

**Sec. 21**: The corresponding Section 21 of the Indian Act is as follows:—"No person shall be employed in a mine—(a) on more than six days in any one week, (b) if

(c) if he works below ground, for more than forty-two hours in any one week, and

(d) for more than eleven hours a day.

he works above ground, for more than sixty hours in any one week, (c) if he works below ground, for more than fifty-four hours in any one week."

(1) This was adopted in the original Bill and passed by the Select Committee. When the Bill was considered by the Council, "fifty-four" was substituted for "sixty" in Clause (b) and "forty-two" for "fifty-four" in Clause (c), on the motion of a Non-official Member who said :—

"The object of this Bill, is mainly to safeguard the interests of the labourers. As that position is admitted by all, I hope that the suggestion of a decrease in the number of hours of work will be approved. Mining operations are very exhausting work for the labourers and it is well-known that our country is a very hot and moist one where the powers of endurance of the people cannot be expected to be as great as in colder countries. I learn that in colder countries such as England an eight-hour day is the maximum limit of work for miners. They want to reduce that to a further extent. Such being the case in a hotter country like ours the work should not be so great as is fixed in this Sub-clause. In the Sub-clause sixty hours per week is provided, that is, ten hours per day. I ought to have substituted forty-eight but as a compromise I suggest fifty-four, that is one hour less a day than the number of hours prescribed. A week consists of six working days. If fifty-four hours are provided for one week, it works out at nine hours per day. I hope that is only a very moderate amendment. This is in regard to work above the ground.

Sub-clause (c) deals with work below the ground. Work below the ground is much more difficult and exhausting than work above the ground. That is admitted by the fact that a less number of hours is prescribed for work below the ground than for work above the ground. In that case, I have suggested that the number of hours should be limited to forty-two because it is more exhausting work. As the main object of the Bill is to safeguard the health and convenience of the labourers I hope these amendments will be accepted".—

*L. C. P., dated 27-4-1927.*

(2) On the motion of another Non-official Member, Clause (d) was newly added. The mover said :—

"It will be admitted by all that mining work entails more hazards and is more unhealthy than factory work of other kinds. When we admit this, it consequently follows that mining work should be regulated more stringently than factory work. * * But, Sir, after all, now we have reached the provisions relating to the regulation and limitation of labour and what do we find ? We find that the Factory Regulation passed long ago is much in advance of the Bill that is placed before us to-day. In the Factory Regulation, there are provisions regulating the period of work, the number of hours of daily work, conditions on which women and children should be employed, etc. But here we have none of them. Sir, the object of limiting the number of hours of work is to protect the health and eventually the life of the labourer. In the present Bill, we have a provision limiting only the number of working hours in a week. But will this provision alone give the desired effect, if a labourer continued to work 18 or 19 hours a day ? I do not think that there are many in this House who have ever gone into a mine and studied the working conditions there. * * But, Sir, those who have studied the conditions of work in mines say that this weekly limit is not of any practical

22. Nothing in Section 21 shall apply to persons who may by Rules be defined to be persons holding positions of supervision or management employed in a confidential capacity.

Supervising staff.

23. In case of an emergency involving serious risk to the safety of the mine or of persons employed therein, the manager may, subject to the provisions of Section 17, permit persons to be employed in contravention of Section 21 on such work as may be necessary to protect the safety of the mine or of the persons employed therein :

Exemption from provisions regarding employment.

Provided that, where such occasion arises, a record of the fact shall immediately be made by the manager and shall be placed before the Inspector at his next inspection of the mine.

24. No child shall be employed in a mine, and no woman or child shall be allowed to be present in any part of a mine which is below the ground.

Restriction as to women and children.

---

use whatsoever. The miners, I understand, do not work for more than 3 or 4 days a week, to finish the week's work, which means 18 hours or so a day. Thus you will see that unless we limit the number of hours of work per diem, we will not be satisfying our fundamental object, namely, limitation of labour. Further, there is also the fear that unless such daily work is limited, the provisions of clauses (*b*) and (*c*) may be easily evaded by a skilful miner by working three days in one mine and finishing his work there and then going to another mine and work there for the remaining days of the week. * Therefore it is more necessary to limit the hours of work in a day than the number of hours in a week. Lastly, I will submit that I have put the daily hours of work at such a high figure as eleven as I very much wish that the principle of the Regulation of the daily hours of work that is recognised in the Factory Regulation be accepted here also."—

*L. C. P., dated 27-4-1927.*

**Sec. 24 :** Section 26 in the Indian Act runs thus :—" No child shall be employed in a mine, or be allowed to be present in any part of a mine which is below ground". The original Bill adopted this provision. When the Bill was considered by the Council, the provision was altered in the manner now enacted, on the motion of a Non-official member who said :—

"The employment of women in mines is a question that has been agitating the minds of every legislator for a pretty long period. * The main feature of any mining legislation in all civilized countries seems to be the prohibition of the employment of women underground. In England, this prohibition was placed in 1842. Sir, in our new Bill which is being considered now, *i. e.*, 85 years after England prohibited the employment of women underground and all the civilized countries throughout the world have followed this prohibition in their legislatures, it is very surprising to find that not only have we not made any provision for the prohibition of employment of women, but we have not even thought of regulating the period of work or labour which has been provided for in the Factories Regulation. Sir, I respectfully beg to submit, that, from

25. No woman shall be employed in a mine before six o'clock in the morning or after six o'clock in the evening.

Restriction as to the employment of women.

what I heard from the learned Law Member yesterday, the prohibition of the employment of children in mines and being present in any part of a mine below ground, is bodily imported from the British Indian Act, without caring to go through the object of this provision in the British Indian Act.

"The prohibition of employment of children was included in the British Indian Act with the object of later on prohibiting the employment of women in the mines. *

"Assembly Debates, page 706, 20th September 1222. I will read it.

'We have taken the first step. We have tentatively proposed that children up to the age of 13 should not be allowed in a mine at all. The effect of that may be to reduce the employment of women in the mines, for women who are mothers very probably will not go down the mines at all if they cannot take their young children with them. That is the first step, and a time may come when Local Governments may think it possible to utilise the powers which they have under clause 30 (*d*) of this Bill to prohibit the employment of women in mines altogether'.

"From the speech of Sir Charles Innes, which I read yesterday, it is clearly seen that the object of introducing that clause was to prohibit the employment of women in due course. Sir, I believe this House will agree with me in thinking that the employment of women underground will produce very harmful effects on their family life as well as their morality. A woman who works underground goes to work early in the morning with her husband and returns late in the evening. Under these conditions, she cannot be a good wife nor a good mother. And what happens to the miner who does not get any comfort at home when he returns? He seeks a kind of relief and rest and for that he takes resort to the grog shop. Sir, it is said that the high percentage of drinking amongst the miners is due to the employment of women underground. When a man becomes addicted to drink, he spends all his money. He wants additional income and therefore he compels his wife much against her wish to work underground in a mine. Thus you will see the man drinks because the woman goes underground to work with him and does not give him the happiness of home and family and the man forces her to work because he wants money to drink. Therefore, Sir, if this vicious circle is to be broken the employment of women underground should be prohibited. Again, Sir, the learned Law Member has failed to benefit himself by the repentance expressed by Sir Charles Innes in not prohibiting the employment of women at the beginning. The following passage which I shall read for the information of the House, will bear testimony to my statement.

'This question of the employment of women in mines has a very old history. As far back as the nineties, we were warned by the Secretary of State that it would be wise in the infancy of coal mining to prohibit at once the employment of women in mines. Unfortunately, we did not take the step then. The Secretary of State warned us that the longer we delayed that step the more difficult it would become, and that is exactly the position that we are now in.'

"If therefore we wish to benefit by the repentance expressed by Mr. Innes, I think we had better prohibit the employment of women even at the beginning."—

*L. C. P., dated 27-4-1927.*

**Sec. 25 :** This Section is not in the Indian Act. When the Bill was considered by the Council, the Section was added on the motion of a Non-official member who said :—

"We have now by a previous clause prohibited the employment of women in mines

26. (1) If any question arises between the Inspector and the manager of any mine as to whether any person is a child, the question shall, in the absence of a certificate as to the age of such person granted in the prescribed manner, be referred by the Inspector for decision to a qualified medical practitioner.

Disputes as to age.

(2) Every certificate as to the age of a person which has been granted in the prescribed manner and any certificate granted by a qualified medical practitioner on a reference under Sub-section (1) shall, for the purposes of this Regulation, be conclusive evidence as to the age of the person to whom it relates.

27. For every mine there shall be kept in the prescribed form and place a register of all persons employed in the mine, of their hours of work, of their days of rest and of the nature of their respective employments.

Register of employees.

---

## CHAPTER VII.

## Rules and Bye-laws.

28. The Government may, by Notification in the Gazette, make Rules consistent with the Regulation for all or any of the following purposes:—

Power of Government to make Rules.

(a) for prescribing the qualifications to be required by a person for appointment as Inspector;

(b) for prescribing and regulating the duties and powers of the Inspector in regard to the inspection of mines under this Regulation;

(c) for prescribing the duties of owners, agents and managers of mines and of persons acting under them;

(d) for prescribing the qualifications of managers of mines and of persons acting under them;

(e) for regulating the manner of ascertaining by examination or otherwise, the qualifications of managers of mines

---

underground. In the Factory Regulation we have the provision that no woman should be employed before 6 o'clock in the morning or after 6 o'clock in the evening. I think it is a very wholesome provision that women should not be allowed to work in any place outside their homes after 6 o'clock in the evening and before 6 o'clock in the morning. Therefore I move the amendment.— *L. C. P., dated 27-4-1927,*

and of persons acting under them, and the granting and renewal of certificates of competency ;

(*f*) for fixing the fees, if any, to be paid in respect of such examinations and of the grant and renewal of such certificates ;

(*g*) for determining the circumstances in which and the conditions subject to which it shall be lawful for more mines than one to be under a single manager, or for any mine or mines to be under a manager not having the prescribed qualifications ;

(*h*) for providing for the making of inquiries into charges of misconduct or incompetency on the part of managers of mines and persons acting under them and for the suspension and cancellation of certificates of competency ;

(*i*) for regulating, subject to the provisions of the Travancore Explosives Regulation and of any Rules made thereunder, the storage and use of explosives ;

(*j*) for prohibiting, restricting or regulating the employment in mines or in any class of mines of women on particular kinds of labour which are attended by danger to the life, safety or health of such women ;

(*k*) for providing for the safety of the persons employed in a mine their means of entrance thereinto and exit therefrom, the number of shafts or outlets to be furnished, and the fencing of shafts, pits, outlets, pathways, and subsidences ;

(*l*) for providing for the safety of the roads and working places in mines, including the siting and maintenance of pillars and the maintenance of sufficient barriers between mine and mine ;

(*m*) for providing for the ventilation of mines and the action to be taken in respect of dust and noxious gases ;

(*n*) for providing for the care, and the regulation of the use of all machinery and plant and of all electrical apparatus used for signalling purposes ;

(*o*) for requiring and regulating the use of safety lamps in mines ;

(*p*) for providing against dangers arising out of the accumulation of water in mines ;

(*q*) for prescribing the notices of accidents and dangerous occurrences, and the notices, reports and returns of mineral output, the persons employed and other matters provided for by Rules, to be furnished by owners, agents and managers of mines and for prescribing the forms of such notices, returns and reports, the persons and authorities to whom they are to be furnished, the particulars to be contained in them and the time within which they are to be submitted ;

(*r*) for prescribing the plans to be kept by owners, agents and managers of mines and the manner and places in which such plans are to be kept for purposes of record ;

(*s*) for regulating the procedure on the occurrence of accidents or accidental explosions or ignitions in or about mines;

(*t*) for prescribing the form of, and the particulars to be contained in, the notice to be given by the owner, agent or manager of a mine under Section 12 ;

(*u*) for prescribing the notice to be given by the owner, agent or manager of a mine before mining operations are commenced at or extended to any point within fifty yards of any public work or classes of public works which the Government may, by general or special order, specify in this behalf ;

(*v*) for providing for the composition of any commission referred to in Section 17 and regulating the procedure to be followed by such commission ;

(*w*) for providing for the appointment of courts of inquiry under Section 19, for regulating the procedure and powers of such courts, for the payment of travelling allowance to the members, and for the recovery of expenses of such courts from the manager, owner or agent of the mine concerned ;

(*x*) for prescribing the scale of latrine and urinal accommodation to be provided at mines, the provision to be made for the supply of drinking water, the supply and maintenance of medical appliances and comforts, the formation and training of rescue brigades and the training of men in ambulance work ;

(*y*) for defining the persons who shall, for the purposes of Section 22, be deemed to be persons holding positions of supervision or management or employed in a confidential capacity ;

(*z*) for prohibiting the employment, in mines, of persons or any class of persons who have not been certified by a qualified medical practitioner to be more than 14 years of age, and for prescribing the manner and the circumstances in which such certificates may be granted and revoked ;

(*aa*) for prescribing the form of register required by Section 27 ;

(*ab*) for prescribing the abstract of this Regulation and the vernacular in which the abstracts and the Rules and bye-laws shall be posted as required by Sections 30 and 31;

(*ac*) for requiring the fencing of any mine or part of a mine, whether the same is being worked or not, where such fencing is necessary for the protection of the public ;

(*ad*) for the protection from injury, in respect of any mine when the workings are discontinued, of property vested in the Government or any local authority or railway company ;

(*ae*) for requiring notices, returns and reports in connection with any matter dealt with by Rules to be furnished by owners, agents and managers of mines, and for prescribing the forms of such notices, returns and reports, the persons and authorities to whom they are to be furnished, the particulars to be contained in them, and the times within which they are to be submitted ; and

(*af*) generally to provide for any matter not provided for by this Regulation or the Rules, provision for which is required in order to give effect to this Regulation.

29. (1) The power to make Rules conferred by Section 28 is subject to the conditions of the Rules being made after previous publication.

Prior publication of Rules.

(2) The date to be specified in accordance with clause (c) of Section 6 of the Travancore General Clauses Regulation, II of 1072, as that after which a draft of rules proposed to be made will be taken under consideration, shall not be less than three months from the date on which the draft of the proposed rules is published for general information.

(3) Rules shall be published in the Gazette and on such publication, shall have effect as if enacted in this Regulation.

30. (1) The owner, agent or manager of a mine may, and shall, if called upon to do so by the Inspector, frame and submit to the Inspector a draft of such bye-laws, not being inconsistent with this Regulation or any Rules for the time being in force, for the control and guidance of the person acting in the management of, or employed in, the mine as such owner, agent or manager may deem necessary to prevent accidents and provide for the safety, convenience and discipline of the persons employed in the mine.

Bye-laws.

(2) If any such owner, agent or manager—

(a) fails to submit within two months a draft of bye-laws after being called upon to do so by the Inspector, or

(b) submits a draft of bye-laws which is not in the opinion of the Inspector sufficient, the Inspector may—

(i) propose a draft of such bye-laws as appear to him to be sufficient, or

(ii) propose such amendment in any draft submitted to him by the owner, agent or manager as will, in his opinion, render it sufficient,

and shall send such draft bye-laws or draft amendments to the owner, agent or manager, as the case may be, for consideration.

(3) If within a period of two months from the date on which any draft bye-laws or draft amendments are sent by the Inspector to the owner, agent or manager, under the provisions of Sub-section (2), the Inspector and the owner, agent or manager are unable to agree as to the terms of the bye-laws to be made under Sub-section (1), the Inspector

shall refer the draft bye-laws for settlement to such officer or authority as the Government may, by general or special order, appoint in this behalf.

(4) (*a*) When such draft bye-laws have been agreed to by the owner, agent or manager and the Inspector, or when they are unable to agree, have been settled by such officer or authority as aforesaid, a copy of the draft bye-laws shall be sent by the Inspector to the Government for approval.

(*b*) The Government may make such modifications of the draft bye-laws as they think fit.

(*c*) Before the Government approve the draft bye-laws, whether with or without modifications there shall be published, in such manner as the Government may think best adapted for informing the persons affected, notice of the proposal to make the bye-laws and of the place where copies of the draft bye-laws may be obtained, and of the time (which shall not be less than thirty days) within which any objections with reference to the draft bye-laws made by or on behalf of persons affected, should be sent to the Government.

(*d*) Every objection shall be in writing and shall state—

(i) the specific grounds of objection, and

(ii) the omissions, additions or modifications asked for.

(*e*) The Government shall consider any objection made within the required time by or on behalf of persons appearing to them to be affected, and may approve the bye-laws either in the form in which they are published or after making such amendments thereto as they think fit.

(5) The bye-laws, when so approved by the Government, shall have effect as if enacted in this Regulation, and the owner, agent or manager of the mine shall cause a copy of the bye-laws in English and in such vernacular or vernaculars as may be prescribed, to be posted up in some conspicuous place at or near the mine where the bye-laws may be conveniently read or seen by the persons employed; and, as often as the

same become defaced, obliterated or destroyed, shall cause them to be renewed with all reasonable despatch.

(6) The Government may, by order in writing, rescind, in whole or in part, any bye-laws so made, and thereupon such bye-law shall cease to have effect accordingly.

Posting up of extracts from Regulation and Rules.

31. There shall be kept posted up at or near every mine in English and in such vernacular or vernaculars as may be prescribed, the prescribed abstracts of this Regulation and Rules.

---

## CHAPTER VIII.

## Penalties and Procedure.

Obstruction.

32. (1) Whoever obstructs the Inspector or any person authorised under Section 9 in the discharge of his duties under this Regulation, or refuses or wilfully neglects to afford the Inspector or such person any reasonable facility for making an entry, inspection, examination or inquiry authorised by or under this Regulation in relation to any mine, shall be punishable with imprisonment for a term which may extend to three months; or with fine which may extend to five hundred rupees, or with both.

(2) Whoever refuses to produce on the demand of the Inspector any registers or other documents kept in pursuance of this Regulation, or prevents or attempts to prevent or does anything which he has reason to believe to be likely to prevent, any person from appearing before or being examined by an Inspecting officer acting in pursuance of his duties under this Regulation, shall be punishable with fine which may extend to three hundred rupees.

Falsification of records, etc.

33. Whoever—

(*a*) counterfeits, or knowingly makes a false statement in, any certificate, or any official copies of certificate, granted under this Regulation, or

(*b*) knowingly uses as true any such counterfeit or false certificate, or

(*c*) makes or produces or uses any false declaration, statement or evidence knowing the same to be false, for the purpose obtaining for himself or for any other person a certificate, or the renewal of a certificate under this Regulation or any employment in a mine, or

(*d*) falsifies any plan or register or record the maintenance of which is required by or under this Regulation, or

(*e*) makes, gives, or delivers any plan, return, notice, record or report containing a statement, entry or detail which is not to the best of his knowledge or belief true,

shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees, or with both.

Omission to furnish plans, etc.

34. Any person who, without reasonable excuse the burden of proving which shall lie upon him, omits to make or furnish in the prescribed form or manner or at or within the prescribed time any plan, return, notice, register, record or report required by or under this Regulation to be made or furnished shall be punishable with fine which may extend to two hundred rupees.

Contravention of provisions regarding employment of labour.

35. Whoever, save as permitted by Section 23, contravenes any provision of this Regulation or of any Rule, or bye-law or of any order made thereunder prohibiting, restricting or regulating the employment or presence of persons in or about a mine shall be punishable with fine which may extend to five hundred rupees.

Notice of accidents.

36. Whoever, in contravention of the provisions of Section 18, fails to give notice of any accidental occurrence shall, if the occurrence results in serious bodily injury, be punishable with fine which may extend to five hundred rupees, or, if the occurrence results in loss of life, be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees, or with both.

Disobedience of orders.

37. Whoever contravenes any provision of this Regulation or of any Rule, or bye-law or of any order made thereunder for the contravention of which no penalty is hereinbefore provided shall be punishable with fine which may extend to one thousand rupees and, in the case of a continuing contravention, with a further fine which may extend to one hundred rupees for every day of which the offender is proved to have persisted in the contravention after the date of the first conviction.

Contravention of law with dangerous results.

38. (1) Notwithstanding anything hereinbefore contained, whoever contravenes any provision of this Regulation or of any Rule, or bye-law or of any order made thereunder, shall be punishable, if such contravention results in loss of life, with imprisonment which may extend to one year, or with fine which may extend to two thousand rupees, or with both; or, if such contravention results in serious bodily injury, with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both; or, if such contravention otherwise causes injury or danger to workers or other persons in or about the mine, with imprisonment which may extend to one month, or with fine which may extend to five hundred rupees or with both.

(2) Where a person having been convicted under this Section is again convicted thereunder, he shall be punishable with double the punishment provided by Sub-section (1).

(3) Any Court imposing, or confirming in appeal, revision or otherwise, a sentence of fine passed under this Section may, when passing judgment, order the whole or any part of the fine recovered to be paid as compensation to the person injured, or, in the case of his death, to his legal representative:

Provided that, if the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or if an appeal has been presented, before the decision of the appeal.

Prosecution of owner, agent or manager.

39. No prosecution shall be instituted against any owner, agent or manager for any offence under this Regulation except at the instance of the District Magistrate or on complaint made by a person aggrieved by the offence.

---

**Sec. 39:** The words "or on complaint made by a person aggrieved by the offence" are not found in the Indian Act. They were added by the Council on the motion of a Non-official Member who said:—

"Prosecutions under this Regulation should not be left to the mere discretion of the District Magistrate, especially because the question is one between capital and labour. The capitalist or the owner of the mine will be an influential man and therefore the District Magistrate may not in some cases launch or order any prosecution, while the aggrieved party who is a labourer, may go without any remedy. In all such cases, to safeguard the interests of the labouring classes, it is highly necessary that the aggrieved party, the labourer himself or, if the labourer is killed his relative who is aggrieved, should be allowed to launch a prosecution."—

*L. C. P., dated 27-4-1927.*

40. No Court shall take cognizance of any offence under this Regulation unless complaint thereof has been made within six months of the date on which the offence is alleged to have been committed.

Limitation of prosecution.

41. No Court inferior to that of a Magistrate of the First Class shall try any offence under this Regulation which is alleged to have been committed by any owner, agent or manager of a mine or any offence which is by this Regulation made punishable with imprisonment.

Cognizance of offences.

42. (1) If the Court trying any case instituted at the instance of the District Magistrate under this Regulation is of opinion that the case is one which should, in lieu of a prosecution, be referred to a commission, it may stay the criminal proceedings, and report the matter to the Government with a view to such reference being made.

Reference to commission in lieu of prosecution in certain cases.

(2) On receipt of a report under Sub-section (1), the Government may refer the case to a commission, or may direct the Court to proceed with the trial.

## CHAPTER IX.

## Miscellaneous.

43. The Government may, by a Notification in the Gazette, exempt any local area or any mine or group or class of mines or any part of a mine or any class of persons from the operation of all or any specified provisions of the Regulation:

Power to exempt from operation of Regulation.

Provided that no local area or mine or group or class of mines shall be exempted from the provisions of Section 24, unless it is also exempted from the operation of all the other provisions of this Regulation:

Provided, further, that any such exemption may, on the occurrence of any public emergency, be granted by the Government by an order in writing.

44. The Government may reverse or modify any order passed under this Regulation by an authority subject to their control.

Power to alter or rescind orders.

45. No suit, prosecution or other legal proceeding whatever shall lie against any person for anything which is in good faith done or intended to be done under this Regulation.

Saving.

46. (1) Whenever the rights in respect of the surface of any land are considered necessary for the prospecting for any mineral or the successful working of any mine or for any other purpose under this Regulation, the Government may, on payment of adequate compensation, acquire such right to such an extent and for such time as may be deemed fit by Government. A certificate in writing signed by the Chief Secretary to the Government shall be conclusive evidence that the acquisition of any right as stated therein is necessary, and no Civil Court shall question the right to make such acquisition.

Acquisition of land.

(2) The compensation due on acquisition may be fixed by agreement, or where no agreement is arrived at, by the decision of the District Court within whose local limits such land is situate on a reference made by an officer empowered by the Government in this behalf or on an application made by the party aggrieved. After such reference or application the provisions of the Land Acquisition Regulation shall, as far as may be, apply to the proceedings before the Courts.

(3) An appeal shall lie to the High Court from the decision of the District Court, and payment shall be made according to the final decision.

(4) The provisions of the Code of Civil Procedure, 1100, and of the Travancore Limitation Regulation shall apply, as far as may be, to proceedings in the District Court and in the High Court.

Sec. 46 : This does not occur in the Indian Act.

# REGULATION I OF 1104.

## A Regulation further to amend the Abkari Regulation, IV of 1073, as amended by Regulation IV of 1074.

*Passed by Her Highness the Maha Rani Regent of Travancore, under date the 12th February 1929, corresponding with the 1st Kumbham 1104, under Section 14 of Regulation II of 1097.*

Whereas it is expedient to amend the Abkari Regulation, IV of 1073, as amended by Regulation IV of 1074, for the purposes hereinafter appearing; It is hereby enacted as follows :—

**Regn. I of 1104** : I. (1) *Objects and Reasons.*—"The object of the amendments proposed in this Bill is in general to effect a more far-reaching control of the use of intoxicating drugs, especially cocaine and allied preparations. The definition of "intoxicating drug" occurring in Section 3 (11) of the Regulation is sought to be amended by making specific mention of the coca plant as a material from which intoxicating substances may be prepared. As there may be cases in which the intoxicant nature of any preparation or substance may be disputed, an "explanation" is also proposed to be added to confer power on Government to declare any substance to be an intoxicating drug. The cultivation of the ganja and the coca plants is proposed to be absolutely prohibited, and clauses 3, 4, 5 and 6 of the Bill relate to this prohibition. Clause 7 of the Bill relates to an amendment of Section 67 of the Regulation. As Section 67 stands, medical practitioners may, without any of the restrictions of the Regulation, deal in medicines containing intoxicants for medicinal purposes. Even if it is considered necessary in any case to exercise control, as it may very often be, there is no legal provision for doing so either generally or in respect of specific persons or specific articles, except in the matter of sales which may be controlled under the latter part of Section 67. It is proposed therefore to take power for Government to control the traffic in intoxicants in fit cases even in respect of medical practitioners and the medical drugs dealt with by them. Occasion has been taken also to take power for Government to exempt any person or any article from the provisions of the Regulation in any fit case and to make it clear that medical practitioners may be permitted to hold possession of liquor also and prepare it into medicines."— *S O & R.*

(2) In introducing the Bill, the Official Member in charge said :—

"The central object of the Bill is to provide for a more effective control of the traffic in, and the use, possession and transport of, intoxicants. Of these, cocaine is the most harmful and it is intended by this Bill to suppress it as much as possible consistently with medicinal requirements and the convenience of the public. There are already some restrictions in this respect in the Regulation and Rules now in force. But the International Opium Convention laid down *inter alia* that very strict control of cocaine and other intoxicants should be provided for; and by the Treaty of Versailles the British Empire has agreed to give effect to the provisions of this Convention. One of these provisions is to control strictly the traffic in cocaine; and the main principle of the Bill is for such control. The definition of "intoxicating drugs" contained

in Section 3 of this Regulation is at present as follows :—

"'Intoxicating drug' includes ganja, bhang, and every preparation and admixture of the same and every intoxicating drink or substance prepared from any part of the ganja plant, from grain, or from other material and not including in the term 'liquor' but does not include opium or anything included within the meaning of that word as defined in Regulation VI of 1063."

This definition is proposed to be amended by making specific reference to the produce of the coca plant as an intoxicating drug. Power is proposed also to be taken for Government to declare as intoxicants any substances the intoxicant nature of which may be contested.

The cultivation of the ganja plant is now strictly prohibited. It is proposed to prohibit also the cultivation of coca plant likewise. Even now the cultivation of the ganja plant and the coca plant is prohibited by the rules. But it is proposed to provide for the prohibition in the Regulation itself. And as a consequence, the amendments in clauses 4, 5 and 6 arise. They are self-evident and do not require explanation except perhaps in respect of clause 4." * * *

"Another amendment is in respect of Section 13, a clause of which is—

"A cultivator or owner of any plant from which an intoxicating drug is produced may sell without a license those portions of that plant from which the intoxicating drug is manufactured or produced to any person licensed under this Regulation to sell, manufacture or export intoxicating drugs:"

Now that the cultivation of the ganja and coca plants is to be prohibited this clause is not necessary, and it is proposed to be deleted.

Another amendment that is proposed is in regard to Section 67 of the Regulation. That Section as it stands gives absolute exemption in regard to medical drugs and druggists and medical practitioners and the like from all the restrictions of the Regulation. Section 67 reads thus :—

"Nothing in the foregoing provisions of this Regulation applies to the manufacture, possession, sale or supply of any *bona fide* medicated article for medicinal purposes by medical practitioners, chemists, druggists, apothecaries or keepers of dispensaries; but it shall be lawful for Our Government at any time by Notification to prohibit the sale of any such article within any defined local area, except under a license which shall be granted on payment of such fees and subject to such conditions as Our Government may deem fit to prescribe."

It will thus be seen that druggists for instance may deal in cocaine without any control whatsoever. It is felt that such absolute exemption is not necessary. The Hague authorities have also specially pointed out that even in such cases there must be some provision of law for exercising control. It is therefore proposed to amend Section 67 accordingly, and along with that it is desired also to make it clear, that when an intoxicating drug is given to a sick person by a doctor that sick person also is exempted in respect of the medicine dispensed to them. As the Law now stands a doctor who keeps a drug, say cocaine, and dispenses it to a sick person is exempt, but his patient cannot keep the drug because he is not exempt. It is therefore proposed to exempt such persons also from the operation of the Regulation and at the same time to keep some reserve power to the Government to control the possession and sale of intoxicants in all cases necessary. Provision is also made to grant exemptions, in cases necessary, to doctors and medical men keeping liquor and bhang and preparing them into medicines. I hope the Bill will be a non-controversial one and I commend it to the acceptance of the House."—

*L. C. P., dated 6-12-1927.*

II. The Bill was published in the Gazette dated 22-11-1927. It was introduced and

## REGULATION I OF 1104.

Short title and commencement.

1. (1) This Regulation shall be called "The Abkari (Amendment) Regulation I of 1104".

(2) It extends to the whole of Travancore and shall come into force at once.

Amendment of Section 3.

2. In Section 3, clause (11) of the Abkari Regulation, IV of 1073, as amended by Regulation IV of 1074 (hereinafter referred to as the said Regulation),—

(a) after the words "any part of the ganja", the words "or the coca" shall be inserted ;

(b) for the words and figures "Regulation VI of 1063" the words and figures "Regulation IV of 1090" shall be substituted ; and

(c) after the word "bhang" the word "coca" shall be inserted.

Amendment of Section 10.

3. In Section 10 of the said Regulation,—

(a) the words "no ganja plant shall be cultivated" shall be omitted ; and

(b) the Section so amended shall be numbered an Sub-section (1) of Section 10 and the following shall be added as Sub-section (2), namely,—

"(2) The cultivation of the ganja and the coca plant is absolutely prohibited."

Amendment of Section 13.

4. In Section 13 of the said Regulation, the following words shall be omitted, namely :—" and a cultivator or owner of any plant from which an intoxicating drug is produced may sell without a license those portions of the plant from which the intoxicating drug is manufactured or produced to any person licensed under this Regulation to sell, manufacture or export intoxicating drugs."

Amendment of Section 35.

5. In Section 35 of the said Regulation, after the words "there shall be", the words "any cultivation of the ganja or the coca plant or " shall be inserted.

---

referred to a Select Committee on 6-12-1927 (*L. C. P., Vol. XII, Pp. 361-380*). The Select Committee's Report was presented to, and considered by, the Council on 16-4-1928 (*L. C. P., Vol. XII, Pp. 454-460*). It was not published as the Bill had not been so altered as to require republication. The Bill was finally read and passed on 3-12-1928 (*L. C. P., Vol. XIV, P. 41*).

The Regulation was published in the Gazette dated 19-2-1929, Pt. I.

Amendment of Section 51.

**6.** In Section 51, clause (*c*), of the said Regulation, after the word "ganja" the words, "or the coca" shall be inserted.

Amendment of Section 67.

**7.** In Section 67 of the said Regulation,—

(*a*) After the word "for" the words "*bona fide*" shall be inserted.

(*b*) The following words occurring after the word "dispensaries" shall be omitted, namely :—

"but it shall be lawful for Our Government at any time by Notification to prohibit the sale of any such article within any defined local area except under a license which shall be granted on payment of such fees and subject to such conditions as Our Government may deem fit to prescribe".

(*c*) after the word "dispensaries" the following shall be added, namely :—

"or to the possession by any person of such articles lawfully supplied by them," and

(*d*) the Section amended as above shall be numbered as Sub-section (1) of Section 67, and the following Sub-sections shall be added namely :—

"(2) It shall be lawful for Our Government at any time by Notification in Our Government Gazette to prohibit the import, export, transport, manufacture, possession, sale or supply (whether for medicinal purposes or otherwise) of any liquor or intoxicating drug otherwise than in accordance with such Rules and conditions (if any) as may be prescribed by Our Government in that behalf and in like manner to cancel such prohibition."

"(3) It shall be lawful for Our Government at any time by Notification in Our Government Gazette to exempt, subject to such conditions (if any) as Our Government may impose, any specified article or class of articles or any specified person or class of persons from the operation of all or any of the provisions of this Regulation or of the Rules made or prohibitions notified thereunder, and in like manner to cancel such exemption."

"(4) It shall also be lawful for Our Government to permit, subject to such restrictions and conditions as Our Government may in each case or class of cases prescribe, the possession by medical practitioners of liquor, ganja, bhang and coca and the preparation by them of medicines containing the same for use in their practice."

---

## REGULATION I OF 1105.†

**A Regulation to amend the Travancore Legislative Council Regulation, II of 1097.**

*Passed by Her Highness The Maha Rani Regent of Travancore, under date the 28th Dhanu 1105, corresponding with the 12th January 1930.*

Whereas it is expedient to amend the Travancore Legislative Council Regulation II of 1097 for the purpose hereinafter appearing;

We are pleased to enact as follows:—

1. (*a*) This Regulation may be called "The Travancore Legislative Council (Amendment) Regulation, 1105," and

(*b*) It shall come into force at once.

2. In the Travancore Legislative Council Regulation, II of 109[illegible] after Section 20, the following Section shall be added, namely,

"21. Notwithstanding anything contained in any law for t[illegible] time being in force no person shall be liable to any proceedings in a[illegible] Court by reason of his speech or vote in the Council or by reason [illegible] anything contained in any official report of the proceedings of the Council except with the previous sanction in writing of Our Government."

† T. G. G., dated 14-1-1930, Pt. II.

PROBATE AND ADMINISTRATION

# REGULATION II OF 1105.

## PROBATE AND ADMINISTRATION REGULATION.

CONTENTS.


Preamble.

CHAPTER I.

**Preliminary.**

Sections.

| | | |
|---|---|---|
| 1. | Short title. Local extent and commencement. | |
| 2. | Saving. | |
| 3. | Interpretation clause ... ... ... | 2 |
| | "Minor" "Will" "Codicil" "Specific legacy" "Demonstrative legacy" "Probate" "Executor" "Administrator" "District Judge" | |
| 4. | As to what property deceased considered to have died intestate ... ... | 30 |

CHAPTER II.

**Of Grant of Probate and Letters of Administration.**

| | | |
|---|---|---|
| 5. | Character and property of executor or administrator as such ... ... | 211 |
| 6. | To whom administration may be granted ... ... | 218 |
| 7. | Effect of letters of administration ... ... | 220 |
| 8. | Acts not validated by administration ... ... | 221 |
| 9. | Probate only to appointed executor ... ... | 222 (1) |
| 10. | Appointment expressed or implied ... ... | 222 (2) |
| 11. | Persons to whom probate cannot be granted... ... | 223 |
| 12. | Grant of probate to several executors simultaneously or at different times ... ... | 224 |


The figures on the right refer to the corresponding Sections of the Indian Succession Act, XXXIX of 1925.

Sections.


13. Separate probate of codicil discovered after grant of probate ... ... 225

Procedure when different executors appointed by codicil.

14. Accrual of representation to surviving executor ... 226

15. Effect of probate ... ... 227

16. Administration with copy annexed of authenticated copy of will proved abroad ... ... 228

17. Grant of administration where executor has not renounced ... ... 229

Exception.

18. Form and effect of renunciation of executorship ... ... ... 23[illegible]

19. Procedure where executor renounces or fails to accept within time limited ... ... 2[illegible]

20. Grant of administration to universal or residuary legatee ... ... ... [illegible]

21. Right to administration of representative of deceased residuary legatee ... .. [illegible]

22. Grant of administration where no executor, nor residuary legatee, nor representative of such legatee ... ... ... [illegible]

23. Citation before grant of administration to legatee other than universal or residuary... ... 23[illegible]

24. To whom administration may not be granted... ... 236


---

CHAPTER III.

## Of Limited Grants.

*(a)—Grants limited in duration.*


25. Probate of copy or draft of lost will ... ... 237

26. Probate of contents of lost or destroyed will ... 238

27. Probate of copy where original exists ... ... 239

28. Administration until will produced ... ... 240


*(b)—Grants for the use and benefit of others having right.*


29. Administration with will annexed to attorney of absent executor ... ... 241

Sections.

30. Administration with will annexed to attorney of absent person who, if present, would be entitled to administer ... ... 242

31. Administration to attorney of absent person entitled to administer in case of intestacy... ... 243

32. Administration during minority of sole executor or residuary legatee ... ... 244

33. Administration during minority of several executors or residuary legatees ... ... 245

34. Administration for use and benefit of minor or lunatic ... ... ... 246

35. Administration *pendente lite* ... ... 247

*(c)—Grants for special purposes.*

36. Probate limited to purpose specified in will... ... 248

37. Administration with will annexed limited to particular purpose ... ... ... 249

38. Administration limited to trust property ... ... 250

39. Administration limited to suit ... ... 251

40. Administration limited to purpose of becoming party to suit to be brought against executor or administrator ... ... 252

41. Administration limited to collection and preservation of deceased's property ... ... 253

42. Appointment, as administrator, of person other than one who, under ordinary circumstances, would be entitled to administration ... ... 254

*(d)—Grants with exception.*

43. Probate or administration with will annexed subject to exception ... ... 255

44. Administration with exception ... ... 256

*(e)—Grants of the rest.*

45. Probate or administration of rest ... ... 257

*(f)—Grants of effects unadministered.*

46. Grant of effects unadministered ... ... 258

Sections.

47. Rules as to grants of effects unadministered .. ... 259

48. Administration when limited grant expired, and still some part of estate unadministered ... 260

CHAPTER IV.

## Alteration and Revocation of Grants.

49. What errors may be rectified by Court ... ... 261

50. Procedure where codicil discovered after grant of administration with will annexed... ... 262

51. Revocation or annulment for just cause ... ... 263

CHAPTER V.

## Of the Practice in Granting and Revoking Probates and Letters of Administration.

52. Jurisdiction of District Judge in granting and revoking probates, etc. ... — 264 (1

53. Power to appoint Delegate of District Judge to deal with non-contentious cases ... ... 2[illegible]

54. District Judge's powers as to grant of probate and administration ... ... 20[illegible]

55. District Judge may order any person to produce testamentary papers ... ... 267

56. Proceedings of the District Judge's Court in relation to probate and administration ... ... 268

57. When and how District Judge to interfere for protection of property ... ... 269

58. When probate or administration may be granted by District Judge ... ... 270

59. Disposal of application made to Judge of District in which deceased had no fixed abode ... ... 271

60. Probate and letters of administration may be granted by Delegate ... ... 272

61. Conclusiveness of probate or letters of administration ... ... 273

Sections.


62. Conclusiveness of application for probate or administration if properly made and verified ... ... 275

63. Petition for probate ... ... 276

64. In what cases translation of will to be annexed to petition ... ... 277

65. Petition for letters of administration ... ... 278

66. Petition for probate or administration to be signed and verified ... ... 280

67. Verification of petition for probate, by one witness to will ... ... 281

68. Punishment for false averment in petition or declaration ... ... 282

69. Powers of District Judge ... ... 283

70. Caveats against grant of probate or administration ... 284 (1) to (3)

71. Form of caveat ... ... 284 (4)

72. After entry of caveat no proceeding taken on petition until after notice to caveator ... ... 285

73. District Delegate when not to grant probate or administration ... ... 286

74. Power to transmit statement to District Judge in doubtful cases where no contention ... ... 287

75. Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court ... ... 288

76. Grant of probate to be under seal of Court... ... 289

77. Grant of letters of administration to be under seal of Court ... ... 290

78. Administration-bond ... ... 291

79. Assignment of administration-bond ... ... 292

80. Time for grant of probate and administration ... 293

81. Filing of original wills of which probate or administration with will annexed granted ... 294

82. Grantee of probate or administration alone to sue, etc., until same revoked.

Sections.


83. Procedure in contentious cases ... ... 295
84. Payment to executor or administrator before probate or administration revoked or annulled ... ... 297
Right of such executor or administrator to recoup himself.
85. Power to refuse letters of administration ... ... 298
86. Removal of executor or administrator and provision for successor ... ... 301
87. Directions to executor or administrator ... ... 302
88. Appeals from orders of District Judge ... ... 299


CHAPTER VI.

## Of Executors of their own Wrong.


89. Executor of his own wrong ... ... 303
90. Liability of executor of his own wrong ... ... 304


CHAPTER VII.

## Of the Powers of an Executor or Administrator.


91. In respect of causes of action surviving deceased, and debts due at death ... ... 305
92. Demands and rights of suit of or against deceased survive to and against executor or administrator ... ... 306
93. Power of executor or administrator to dispose of property ... ... 307
94. General powers of administration ... ... 308
95. Commission or agency charges ... ... 309
96. Purchase by executor or administrator of deceased's property ... ... 310
97. Powers of several executors or administrators exercisable by one ... ... 311
98. Survival of powers on death of one of several executors or administrators ... ... 312
99. Powers of administrator of effects unadministered ... ... 313
100. Powers of administrator during minority ... ... 314

## CHAPTER VIII.

### Of the Duties of an Executor or Administrator.

Sections.

| | | |
|---|---|---|
| **101.** | As to deceased's funeral ceremonies ... ... | 316 |
| **102.** | Inventory and account ... ... | 317 |
| **103.** | As to property of, and debts owing to deceased ... | 319 |
| **104.** | Expenses to be paid before all debts ... ... | 320 |
| **105.** | Expenses to be paid next after such expenses ... | 321 |
| **106.** | Wages for certain services to be next paid, and then other debts ... ... | 322 |
| **107.** | Save as aforesaid, all debts to be paid equally and rateably ... ... | 323 |
| **108.** | Debts to be paid before legacies ... ... | 325 |
| **109.** | Executor or administrator not bound to pay legacies without indemnity ... ... | 326 |
| **110.** | Abatement of general legacies ... ... | 327 |
| **111.** | Non-abatement of specific legacy when assets sufficient to pay debts ... ... | 328 |
| **112.** | Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses ... ... | 329 |
| **113.** | Rateable abatement of specific legacies ... ... | 330 |
| **114.** | Legacies treated as general for purpose of abatement ... ... | 331 |


## CHAPTER IX.

### Of Assent to a Legacy by Executor or Administrator.

| | | |
|---|---|---|
| **115.** | Assent necessary to complete legatee's title ... | 332 |
| **116.** | Effect of executor's assent to specific legacy ... | 333 |
| **117.** | Conditional assent ... ... | 334 |
| **118.** | Assent of executor to his own legacy ... ... Implied assent. | 335 |
| **119.** | Effect of executor's assent ... ... | 336 |
| **120.** | Executor when to deliver legacies ... ... | 337 |


## CHAPTER X.

### Of the Payment and Apportionment of Annuities.

| | | |
|---|---|---|
| **121.** | Commencement of annuity when no time fixed by will ... ... | 338 |

Sections.

122. When annuity, to be paid quarterly or monthly, first falls due ... ... 339

123. Dates of successive payments when first payment directed to be made within given time or on day certain ... ... 340

CHAPTER XI.

## Of the Investment of Funds to provide for Legacies.

124. Investment of sum bequeathed where legacy, not specific, given for life ... ... 341

125. Investment of general legacy, to be paid at future time ... ... ... 342

126. Procedure when no fund charged with or appropriated to annuity ... ... ... 343

127. Transfer to residuary legatee of contingent bequest ... ... ... 344

128. Investment of residue bequeathed for life, with direction to invest in specified securities ... 346

129. Time and manner of conversion and investment ... ... ... 347

130. Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf... ... 348

CHAPTER XII.

## Of the Produce and Interest of Legacies.

131. Legatee's title to produce of specific legacy... ... 349

132. Residuary legatee's title to produce of residuary fund ... ... ... 350

133. Interest when no time fixed for payment of general legacy ... ... ... 351

134. Interest when time fixed ... ... 352

135. Rate of interest ... ... ... 353

136. No interest on arrears of annuity within first year after testator's death ... ... 354

137. Interest on sum to be invested to produce annuity ... ... ... 355

CHAPTER XIII.

## Of the Refunding of Legacies.

Sections.


138. Refund of legacy paid under Judge's orders... ... 356
139. No refund if paid voluntarily ... ... 357
140. Refund when legacy has become due on performance of condition within further time allowed ... ... ... 358
141. When each legatee compellable to refund in proportion ... ... ... 359
142. Distribution of assets ... ... ... 360
Creditor may follow assets.
143. Creditor may call upon legatee to refund ... ... 361
144. When legatee, not satisfied or compelled to refund under Section 143, cannot oblige one paid in full to refund ... ... 362
145. When unsatisfied legatee must first proceed against executor, if solvent ... ... 363
146. Limit to refunding of one legatee to another ... 364
147. Refunding to be without interest ... ... 365
148. Residue after usual payments to be paid to residuary legatee ... ... 366
149. Transfer of assets from Travancore to executor or administrator in country of domicile for distribution ... ... 367


CHAPTER XIV.

## Of the Liability of an Executor or Administrator for Devastation.


150. Liability of executor or administrator for devastation ... ... 368
151. Liability for neglect to get in any part of property ... ... 369


CHAPTER XV.

## Miscellaneous.


152. Saving clause ... ... 391
153. Probate and administration to be granted only under this Regulation.

Sections.

154. Surrender of revoked probate or letters of administration ... ... 296

155. Amendment of Section 3, Succession Certificate Regulation.

156. Grant of probate or administration to supersede certificate under Regulation IX of 1090 ... 215

157. Insertion of a new Article X in Schedule I, Court Fees Regulation, VI of 1087.

158. Insertion of a new Chapter I-A in the Court Fees Regulation.

CHAPTER I-A.

**Probate and Letters of Administration.**

13-A. Notice of application for probate or letters of administration to be given to Revenue authorities and procedure thereon.

13-B. Relief where too high a court fee has been paid.

13-C. Relief where debts due from a deceased person have been paid out of his estate.

13-D. Relief in case of several grants.

13-E. Probates declared valid as to trust property, though not covered by court fee.

13-F. Provision for case where too low a court fee has been paid on probates, &c.

13-G. Administrator to give proper security before letters stamped under Section 13-E.

13-H. Executors, etc., not paying full court fee on probate, etc., within 6 months after discovery of under-payment.

13-I. Payment of court fees in respect of probate and letters of administration.

13-J. Recovery of penalty.

13-K. Sections 3 and 19 not to apply to probates and letters of administration.

159. Insertion of a new Article VII-A in Court Fees Regulation.

160. Addition of a new Schedule "III" in the Court Fees Regulation.

# PROBATE AND ADMINISTRATION

## A Regulation to provide for the Grant of Probate of Wills and Letters of Administration to the estates of deceased persons

*Passed by Her Highness The Maha Rani Regent of Travancore, under date the 25th Kumbhom 1105, corresponding with the 8th March 1930, under Section 14 of Regulation II of 1097.*

**Preamble.** Whereas it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons; It is hereby enacted as follows:—

**Regn. II of 1105:** I. (1) *Objects and Reasons.* "As the law of Travancore stands at present, there is no means of conferring upon anybody a complete and conclusive title as the representative of the estate of a deceased person, Not that no one can claim any right as the representative of a deceased person or that he cannot get a declaration of his representative capacity, but such recognition or declaration though it may be binding on the parties to the litigation in which he got it is not binding against the whole world or other people and is liable to be impeached at the instance of other parties. Since the disruption of the joint family system and the rules of descent in separate shares introduced by the recent social legislation affecting the Nayars, Ezhavas and Nanjinad Vellalas, the bulk of the people of Travancore, generally speaking, can claim individually and separately to the estate of a deceased ancestor. The necessity, therefore, of some person being able to administer the estate of a deceased without giving rise to trouble and litigation and creating doubtful titles has become increasingly great. The heirs may be very numerous. Their interests may differ in degree, some of them may be minors or otherwise incapacitated, others may be residing at a distance; the titles of some may be disputed; the settlement of claims against the estate may thus be a matter of endless complication; the making of a satisfactory title to any portion of it, which it may be necessary to sell, may be impossible. Much the same will be the case even when a deceased person has left a will, unless it be possible to prove a title under the will in such a way that it may be binding as against the whole world. The ordinary device of meeting the situation adopted in other countries is to empower a principal Civil Court to grant to some proper person letters of administration to the estate of a deceased individual if he died intestate or a probate if he died leaving a will appointing executors, the person to whom the grant of the letters of administration or the probate was made being conclusively constituted thereby the representative of the deceased, with power to deal with the estate in such a complete and indubitable manner as the persons who deal with him are absolutely protected and can claim absolute title, and no trouble or litigation or dispute of title will thereafter arise on the ground of the title of the representative being open to question. It is to provide for the grant of such probate and letters of administration that this Bill is designed.

"2. In the case of wills, further, under the Travancore Wills Regulation, VI of 1074, a law of probate has been contemplated. In order that a will may be operative under that Regulation, it must be either registered or deposited in a registry as provided for by the Travancore Registration Regulation, II of 1087, or it must be admitted to probate, that is to say, proved according to the law for the grant of probates. It has been recently held by a Full Bench of the Travancore High Court (in C. M. Appeal No. 148 of 1101) that a will

*T. G. G., dated 11th March 1930.*

that has not been either registered or deposited as mentioned above is absolutely inoperative for want of a law of probate in Travancore. This has made it all the more necessary to enact a law of probate. Again, a law of probate and administration has been contemplated by our Limitation law also. (See Article 33 of the First Schedule to the Travancore Limitation Regulation, VI of 1100).

"3. It is probably necessary to refer to the effect of the Succession Certificate Regulation, IX of 1090, in this connection. The purpose and object of that Regulation though somewhat allied are considerably different from those of the present Bill. First of all, the grant of a certificate under that Regulation applies only to the debts (and securities) due to a deceased person and not to all his property; and secondly, though a debtor who pays the debt to a certificate-holder as representing the deceased creditor is absolutely protected against claims made by any body else in respect of the same debt, and, to that extent, the certificate is a conclusive title to represent the deceased, yet it is not conclusive as to the title to the property represented by the debt, nor is it an authority to administer the entire estate of the deceased or even any portion of it. A probate or letters of administration stand on a different and superior footing. And it is further expressly provided that when they conflict with a succession certificate, the latter must be deemed to have been superseded by the former.

"4. Although it is desirable to clothe a person with a conclusive title as the representative of a deceased individual by granting him probate or letters of administration; yet it may be hard to insist on it as essential in every case (as is done in some countries), inasmuch as it may tend to impose on a multitude of poor and ignorant people, even in cases where there is no difficulty or dispute, an unnecessary amount of trouble and expense. It is not therefore proposed by this Bill to make it compulsory that probate or letters of administration must necessarily be obtained to establish title to any property of a deceased person, as is laid down by the Indian Succession Act, 1925, Sections 212 and 213.

"5. This Bill is drawn closely on the lines of the law of probate and administration as it prevails in British India as regards Hindus and Mahomedans, generally. This law was contained in the Probate and Administration Act, 1881, which, with certain other allied enactments, has now been consolidated in the Indian Succession Act, 1925. The Bill follows also the lines of the Mysore Probate and Administration Regulation, 1914, and the Cochin Probate and Administration Regulation, 1096, which too are drawn closely on the lines of the enactment in British India.

"6. In regard to the court fees payable for the grant of a probate or letters of administration, the law in British India has been adopted in this Bill, according to which no fee whatever is payable if the value of the property in respect of which the grant of probate or letters of administration is made is Rs. 1,000 or less. Beyond that, up to a value of Rs. 10,000, two per cent. of the value, and beyond that, two and one-half per cent. up to a value of Rs. 50,000, and beyond that, a fee of three per cent. has been prescribed in the Bill, as in British India. It is also expressly provided that if after the grant of a succession certificate in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant. As said above, it is not compulsory that every one that wants to establish a right derived by succession from a deceased person should take advantage of the proposed law. But to those who would avail themselves of it, the resulting gain in quieting titles and obviating litigation as to the ownership of property cannot be overrated. It is only such people that have to pay the

fee. They would thus voluntarily, and usefully, pay to the public treasury a part of the money which they now have to spend perhaps uselessly, in litigation."—
*S. O & R.*

(2) In Introducing the Bill, the Official Member in charge said :—

"The Bill as its title would indicate is intended to provide for the grant of probate of wills and letters of administration to the estates of deceased persons. The title and the Bill contain certain technical expressions not in vogue in Travancore and not perhaps readily understood here although in other countries, which have had a probate and administration law for long, they might be readily understood. Of these expressions, I think, I may at the very outset explain what probate of wills and letters of administration mean. I take it that the word "will" does not require explanation. It, of course, means the legal declaration of the intentions of the testator, *i. e.*, the person executing the will, with regard to his property which he desires to carry into effect after his death. But a will has to be proved, so that its purport may be carried out or enforced against those who would dispute it, and this brings us to the word "probate of a will."

"Probate" used as a noun literally means "proof." Both the words "probate" and "proof" are derived from the same root 'probare' whose past participle is 'probatus'. Technically probate means the official proof of a will, to put it in a brief way. To go into a little more detail 'probate' means the determination of the Court before which the will is produced and propounded that the paper, purporting to be a will, is the will and testament of the deceased and its admission thereupon to record as such. It determines or implies that, the instrument is genuine and regular in form and execution and that the testator was competent to execute the will. Of course, a will may, if registered, be proved in Travancore even now as between party and party in a Court of Law. But that proof will avail only as between themselves and it has to be proved, again if another party contests it. But in the case of the proof called probate the proof is conclusive and is binding on the whole world. If the will is however an unregistered one, no proof whatever of the will is allowed by law owing to the fact that there is no probate law now in Travancore. That has been ruled recently by a Full Bench of the High Court. In this Bill, as in corresponding Statutes elsewhere, the word "probate" means not exactly the proof of the will but a copy of the will so proved and authenticated by the Court with its seal together with the express grant of legal authority to carry out the provisions of the will. Probate is thus an instrument of Court and is granted to an executor appointed under the will.

I would come next to the term "letters of administration." Letters of administration also mean an instrument of Court, being the written instrument granted by a Court authorising the grantee, who is called the administrator, to administer the goods and estates of a deceased person. Members may know what the administration of the estate of a deceased person means. It means, generally speaking, the management and disposal under legal authority, of the estate of a deceased person whether by the executor or administrator, the correct expression for the management and disposal by the *executor* being strictly "execution", which expression however is not now generally used. Those who have long been under the Marumakkathayam system or the joint family system may not readily appreciate what is involved in the administration of an estate. For, in a Tarwad or joint family, there is strictly no estate to be administrated. The Tarwad or family is a corporation and it never dies. The Tarwad or family property belongs to the corporation. The Karanavan or Kartha, the manager or the man in possession may die individually but legally, and in regard to the estate, the

Karanavan never dies—just in the same way as a king never dies. What is proclaimed on the death of the king "The king is dead, long live the king" may be appositely described of the Karanavan of the Tarwad and the Kartha of a family. Thus, to say that the 'Karanavan is dead, long live the Karanavan' will be quite correct legally. In such a condition of things, the succeeding man, the Karanavan or Kartha, simply steps into the shoes of the deceased man and represents the corporation and he has legal authority to manage the entire family property. He is the man to be legally in possession of the properties. He is the man legally bound to pay the maintenance to those entitled to it, to discharge debts, to collect debts, to redeem properties, to surrender properties, to defend suits, to prosecute suits and so on. But imagine for a moment a man dying leaving a few children and that he is one whose property would in law descend to the children in equal or in varying shares, one who is able to dispose of the property by will as is the case with almost every community in Travancore now. Such a man dies leaving an estate and nobody can straightaway say 'I represent the estate'. There are many people who would claim rights to the estate and in different degrees and kinds. There may be sons and daughters. He may have left a will and there may be legatees. There may be creditors and so on. All of them have rights in the estate. The variations in rights may be caused also by the difference in law applicable to the man who leaves the estate. It may differ amongst Nayars, Christians, Mahomedans, Vellalas and Ezhavas. After the recent social legislations affecting the Nayars, Ezhavas and Vellalas, the members of almost every community in Travancore leave an estate when they die, and it has to be taken and divided by different persons and ūtilised by different men for different purposes. Who will do all these or cause all these things to be done? Who has the legal authority to take charge of the estate and carry out all the purposes to which it is subject? One child by himself, even the eldest, cannot do it. For what is his special right or authority over others? And then there may be legatees and there may be creditors and they may not all agree as to the disposal of the estates. Who then will represent the estate and who is the man that will have legal authority to take charge of and to manage the estate if any debts have to be paid? Which of the children will pay and how will he pay out of the estate? It may be that all the children are not available to dispose the estate. Some may be in different parts, some may be minors, some may be perverse and may not agree and some may dishonestly disagree. But debts have to be paid and probably a property has to be sold for it. Even a lakh of rupees worth of property, it is well known, will be lost entirely if even 10,000 rupees debts cannot be paid promptly. But who will sell the property and pay off the debts? Then again, who will distribute the property among the heirs and legatees or meet other charges on the estate? Who will give maintenance to those entitled? Who has the right to collect debts, to prosecute suits and defend suits? All these acts as said already form part of the administration of the estate. When there are many heirs and many demands, somebody must be clothed with legal authority to do all these, and this management and disposal of the estate by him is called the administration of the estate. The letters of administration grant a legal and formal authority to the grantee, the administrator, to so administer the estate, the authority being one that will not be allowed to be questioned and one that will prevail against all the heirs and legatees and in fact against the whole world.

Now if members will kindly turn to Chapter I of the Bill and read the definitions they may readily follow what is stated.

* * *

It is the executor under a will that gets the probate, and the man who gets the letters of administration is the administrator.

These executors and administrators are the unquestionable representatives of the deceased and they stand in the shoes of the deceased. The estate vests in them and they can do all that is necessary for the estate in the same way as would have been done by the deceased man himself. Once such a representative has been created none can say that anybody else is the representative. Clause 4 and others provide for this. I am not going to trouble the House by reading all the clauses. But one or two may be read.

* * *

Thus then, the central object of the Bill is to provide for the creation of an unquestionable representative of a deceased's estate, a representative whose title has to be accepted by every one, the heirs, the legatees and all, one who has got ample powers but one who acts more or less under the control of the Court, one with whom any person may deal with safety, without any fear of his representative character being ever called into question, one who could sell properties, if need be, to pay off debts, one who could provide for the maintenance of Stridhanam and one who could pay legacies and distribute the assets, and so on. Such a power for the creation of a legal representative exists in other countries. It existed very long ago in England, it having been exercised by the Ecclesiastical Courts. But by the passing of the Probate Acts of 1857 and 1858 the powers came to be exercised by the King's Court in England. Law has been enacted for the purpose in British India long ago applying to various communities, and also in Mysore in the year 1914, and in Cochin in the year 1921. And this Bill is framed on the lines of the law in British India, Mysore and Cochin.

But it may be asked, what is the good in creating a representative especially one whose title is conclusive, one whose title to deal with the property is unquestionable and will be accepted by the whole world including all the Courts of law. The ordinary rule, of course, is that a declaration of any title obtained from a Court is binding only as between the parties to that action but not as against others. But a grant of probate or letters of adminstration confer on the grantee a title that is complete and conclusive, as against the whole world, as the representative of the estate of the deceased. Members may readily see the advantages of clothing any person with such an unquestionable title if they will only imagine the difficulties in administering an estate. Take for example the simple case of an estate having to pay a debt. The estate may be worth a lakh of rupees and debt may be but only rupees ten thousand, and some property has to be alienated for the purpose of paying the debts. If the debt is not paid the whole estate may be sold by the Court at the instance of the creditors. So somebody must sell some portion of the estate. Can one son by himself do it? There may be others and minor sons too, some living at a distance, sons who are not in amicable terms with the others and then there may be legatees; there may be too some whose claim to the estate, either as son or as legatees, may be disputed. In such circumstances, if one or more of these persons sell or mortgage a portion of the property, who will be there to purchase it? For, an unqustionably legal title cannot be conveyed. And if anybody comes forward to purchase, he will not offer a fair price; for he must provide for possible litigation about the title he gets. But if there is an unquestionable representative any person can safely deal with such representative. The representative can readily sell or mortgage a reasonable portion of the estate and pay the debt, and the purchaser or mortgagee gets an unimpeachable title and so he readily offers a fair price. So also in regard to the other demands on the estate, such as leggacies, shares, maintenance charges, etc. When there is an unchallengable representative, he can give all the legacies, he can distribute the shares, he can provide for the maintenance charges, he can prosecute suits, he can collect debts

and so on. Not only so ; he is bound to do all these and the Bill provides that he should do all these more or less under the control and supervision of the Court. There will be no necessity for any unnecessary litigation. There will be absolutely no trouble and difficulty for anybody. And even helpless women and children will be quite safe.

In other countries where there is a probate and administration law it is especially provided that no right to the estate of the deceased persons can be established in a Court of law against anybody, or in any circumstance, unless probate or letters of administration have been granted in respect of the estate. In other words, if ever a question relating to the estate or any title derived from the estate goes to a Court, there must be a probate or letters of administration ; else the Court will not hear the claim. It is felt that to make a similar provision here may be hard on the people. It may be desirable to provide a machinery for clothing a person, if anybody wants it, with a complete and conclusive title as the representative of an estate. But it may be hard to insist on it as a condition precedent in every case inasmuch as it may tend to impose on a multitude of poor and ignorant people, even in cases where there is no difficulty or dispute, an unnecessary amount of trouble and expense. It is therefore not made compulsory in this Bill that every one who wants to establish a right to any part of a deceased's estate should resort to this proposed law and obtain a grant of probate or administration. But if once a grant is obtained, the grantee gets a complete and conclusive title and the advantages of having such an unquestionable representative of a deceased man's estate have been adverted to. To those therefore who would take advantage of the provisions of this proposed law, the resulting benefits in quieting title and obviating litigation cannot be exaggerated ; and it is hoped that as the law begins to be understood and appreciated by the people they will take largely to its provisions.

It is proposed to charge a small fee for the grant of probate and letters of administration in the same way as in the case of the succession certificates. I believe it will not be felt to be too much having regard to the advantages to be derived by the grant of probate and letters of administration. Probate is to be granted by the District Court. Provision is made here for the grant being made by others called delegates ; and they will exercise this power only in cases where there is not much controversy. In cases of controversy and dispute the District Court will inquire and there will be a regular appeal therefrom. Probably it may be urged that there is no necessity for this legislation so long as there is already provision for the grant of succession certificates. I have explained it fully in the statement of objects and reasons and I believe I need not read it over now. The House may be aware that if a man wants to sue for a debt due to his deceased father or other relative of whom he claims to be the representative, such person will have to obtain succession certificate before he files the suit. It may be asked, which will prevail as between a succession certificate and a probate or letters of administration. In such cases it is provided that the probate should prevail, and the reason is that the succession certificate is granted only on a summary inquiry. It has also been provided that in cases where probate or letters of administration have been obtained there is no necessity for getting a succession certificate and as said just now, when the succession certificate and the probate or letters of administration conflict with each other the latter should prevail. At present the fee charged for a succession certificate is 1½% at the outset and 2% for extension of the certificate. Under this Bill, no fee whatever will be charged for probates and letters of administration relating to estates worth rupees one thousand or less. In other cases a fee of 2½% is proposed to be charged and a graded scale of higher fees has also been provided for, for larger estates. I do not think the fee

## CHAPTER I.

### Preliminary.

Short title. 1. This Regulation may be called the "Travancore Probate and Administration Regulation, of 1105".

Local extent and commencement. It applies to the whole of Travancore and it shall come into force on the 1st Chingom 1106.

Saving. 2. Nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day.

Interpretation clause. 3. In this Regulation, unless there is something repugnant in the subject or context,—

Minor. "Minor" means any person who shall not have completed the age of eighteen years; and "minority" means the status of any such person:

Will. "Will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death:

Codicil. "Codicil" means an instrument made in relation to a will and explaining, altering or adding to its dispositions; it shall be treated as forming a part of the will:

Specific legacy. "Specific legacy" means a legacy of specified property:

Demonstrative legacy. "Demonstrative legacy" means a legacy directed to be paid out of specified property:

---

will be considered too much in the light of the advantages to be derived by the grant of probate and letters of administration. These will avoid a lot of trouble and unnecessary and useless litigation and one should not grudge to pay a little for such advantages. The measure is a new one in Travancore but is a very useful one, and I hope that it will commend itself to the House."— *L. C. P., dated 6-12-1927.*

II. It was introduced in the Council and referred to a Select Committee on 6-12-1927 (*L. C. P. Vol. XII, Pp. 380-390*). The Committee's Report was published on 3-4-1928. It was presented to, and considered by, the Council on 16-4-1928 (*L. C. P., Vol. XII, Pp. 461-470*). The Bill was finally read and passed on 21-1-1930.

Sec. 3: *Specific legacy.*—Section 142 of the Indian Succession Act defines the expression thus:—"Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific." This is followed by a number of illustrations.

Probate. "Probate" means the copy of a will certified under the seal of a Court of competent jurisdiction with a grant of administration to the estate of the testator:

Executor. "Executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment confided:

Administrator. "Administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor; and

District Judge. "District Judge" means any Judge of a principal Civil Court of original jurisdiction.

As to what property deceased considered to have died intestate.

4. A person is deemed to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

*Illustrations.*

(i) A has left no will. He has died intestate in respect of the whole of his property.

(ii) A has left a will, whereby he has appointed B his executor; but the will contains no other provisions. A has died intestate in respect of the distribution of his property.

(iii) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.

(iv) A has bequeathed 1,000 rupees to B and 1,000 rupees to the eldest son of C, and has made no other bequest; and has died leaving the sum of 2,000 rupees and no other property. C died before A without having ever had a son. A has died intestate in respect of the distribution of 1,000 rupees.

---

*Demonstrative legacy.*—Section 150 of the Indian Act defines the expression thus:—"Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

*Explanation.*—The distinction between a specific legacy and a demonstrative legacy consists in this, that—

where specified property is given to the legatee, the legacy is specific: where the legacy is directed to be paid out of specified property, it is demonstrative." This definition is also followed by illustrations.

## CHAPTER II.

## Of Grant of Probate and Letters of Administration.

Character and property of executor or administrator as such.

5. The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes and all the property of the deceased person vests in him as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

To whom administration may be granted.

6. (1) When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

(2) When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

(3) When no such person applies, it may be granted to a creditor of the deceased.

Effect of letters of administration.

7. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Acts not validated by administration.

8. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the estate of the intestate.

Probate only to appointed executor.

9. Probate can be granted only to an executor appointed by the will.

Appointment expressed or implied.

10. The appointment may be express or by necessary implication.

*Illustrations.*

(a) A wills that C be his executor if B will not. B is appointed executor by implication.

(b) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds "but should the within named C be not living, I do constitute and appoint B my whole and sole executrix", C is appointed executrix by implication.

(c) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words:—"I appoint my nephew, my residuary legatee, to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted.

11. Probate cannot be granted to any person who is a minor or is of unsound mind.

Grant of probate to several executors simultaneously or at different times.

12. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

*Illustration.*

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first, then to A.

Separate probate of codicil discovered after grant of probate.

13. If a codicil is discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Procedure when different executors appointed by codicil.

If different executors are appointed by the codicil, the probate of the will shall be revoked, and new probate granted of the will and the codicil together.

Accrual of representation to surviving executor.

14. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Effect of probate.

15. Probate of a will when granted establishes the will from the death of the testator and renders valid all intermediate acts of the executor as such.

Administration with copy annexed of authenticated copy of will proved abroad.

16. When a will has been proved and deposited in a Court of competent jurisdiction situated beyond the limits of Travancore and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Grant of administration where executor has not renounced.

17. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship:

Exception.

Provided that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Form and effect of renunciation of executorship.

18. The renunciation may be made orally in the presence of the District Judge, or by a writing signed by the person renouncing and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Procedure where executor renounces or fails to accept within time limited.

19. If an executor renounces, or fails to accept the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Grant of administration to universal or residuary legatee.

20. When (*a*) the deceased has made a will, but has not appointed an executor, or

(*b*) the deceased has appointed an executor who is legally incapable or refuses to act, or who has died before the testator, or before he has proved the will, or

(*c*) the executor dies after having proved the will, but before he has administered all the estate of the deceased,

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate or of so much thereof as may be unadministered.

Right to administration of representative of deceased residuary legatee.

21. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

22. When there is no executor and no residuary legatee, or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor,

may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Citation before grant of administration to legatee other than universal or residuary.

23. Letters of administration with the will annexed shall not be granted to any legatee other than a universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

To whom administration may not be granted.

24. Letters of administration cannot be granted to any person who is a minor or is of unsound mind.

---

## CHAPTER III.

### Of Limited Grants.

*(a)—Grants limited in duration.*

Probate of copy or draft of lost will.

25. When a will has been lost or mislaid since the testator's death or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of contents of lost or destroyed will.

26. When a will has been lost or destroyed, and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

Probate of copy where original exists.

27. When the will is in the possession of a person residing out of Travancore, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor and it is necessary in the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted limited until the will or an authenticated copy of it is produced.

Administration until will produced.

28. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it is produced.

*(b)—Grants for the use and benefit of others having right.*

Administration with will annexed to attorney of absent executor.

29. When any executor is absent from Travancore and there is no executor within Travancore willing to act, letters of administration with the will annexed may be granted to the attorney or agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Administration with will annexed to attorney of absent person who, if present, would be entitled to administer.

30. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from Travancore, letters of administration with the will annexed may be granted to his attorney or agent, limited as mentioned in Section 29.

Administration to attorney of absent person entitled to administer in case of intestacy.

31. When a person entitled to administration in case of intestacy is absent from Travancore, and no person equally entitled is willing to act, letters of administration may be granted to the attorney or agent of the absent person limited as mentioned in Section 29.

Administration during minority of sole executor or residuary legatee.

32. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court may think fit, until the minor has attained his majority, on attaining which and not before, probate of the will shall be granted to him.

Administration during minority of several executors or residuary legatees.

33. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

Administration for use and benefit of minor or lunatic.

34. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestate's estates applicable in the case of the deceased, is a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there is no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic until he attains majority or becomes of sound mind, as the case may be.

35. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

Administration *pendente lite.*

*(c)—Grants for special purposes.*

36. If an executor is appointed for any limited purpose specified in the will, the probate shall be limited to that purpose and, if he should appoint an attorney or agent to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

Probate limited to purpose specified in will.

37. If an executor appointed generally gives an authority to an attorney or agent to prove a will on his behalf and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

Administration with will annexed limited to particular purpose.

38. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

Administration limited to trust property.

39. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit and until a final decree shall be made therein and carried into complete execution.

Administration limited to suit.

40. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to which the same has or have been granted is absent from Travancore, the Court that has granted the probate or letters of administration

Administration limited to purpose of becoming party to suit to be brought against executor or administrator.

may grant to any person whom it thinks fit letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Administration limited to collection and preservation of deceased's property.

41. In any case in which it appears necessary for preserving the property of a deceased person, the principal Civil Court of original jurisdiction within whose local jurisdiction any of the property is situate may grant, to any person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Appointment as administrator of person other than one who under ordinary circumstances would be entitled to administration.

42. (1) When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of Travancore, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Court may, in its discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as it thinks fit to be administrator.

(2) In every such case letters of administration may be limited or not as the Court thinks fit.

*(d)—Grants with exception.*

Probate or administration, with will annexed, subject to exception.

43. Whenever the nature of the case requires that an exception be made, probate of a will or letters of administration with the will annexed shall be granted subject to such exception.

Administration with exception.

44. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

*(e)—Grants of the rest.*

Probate or administration of rest.

45. Whenever a grant with exception, of probate, or letters of administration, with or without the will annexed, has been made, the person entitled to probate or

administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

*(f)—Grants of effects unadministered.*

Grant of effects unadministered.

46. If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Rules as to grants of effects unadministered.

47. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Administration when limited grant expired, and still some part of estate unadministered.

48. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

## CHAPTER IV.

## Alteration and Revocation of Grants.

What errors may be rectified by Court.

49. Errors in names and descriptions, or in setting forth the time and place of the deceased's death or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

Procedure where codicil discovered after grant of administration with will annexed.

50. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

Revocation or annulment for just cause.

51. The grant of probate or letters of administration may be revoked or annulled for just cause.

*Explanation.*—"Just cause" shall be deemed to exist where—

Just cause.

(*a*) the proceedings to obtain the grant were defective in substance ; or

(b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or

(c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or

(d) the grant has become useless and inoperative through circumstances; or

(e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Regulation, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

*Illustrations.*

(i) The Court by which the grant was made had no jurisdiction.

(ii) The grant was made without citing parties who ought to have been cited.

(iii) The will of which probate was obtained was forged or revoked.

(iv) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(v) A has taken administration to the estate of B, as if he had died without leaving a will, but a will has since been discovered.

(vi) Since probate was granted, a later will has been discovered.

(vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will.

(viii) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

---

## CHAPTER V.

## Of the Practice in Granting and Revoking Probates and Letters of Administration.

Jurisdiction of District Judge in granting and revoking probates, etc.

52. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his District.

Power to appoint Delegate of District Judge to deal with non-contentious cases.

53. The High Court may, from time to time, with the sanction of Our Government, appoint such judicial officers within any District as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe.

Persons so appointed shall be called "District Delegates".

District Judge's powers as to grant of probate and adminstration.

54. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding pending in his Court.

District Judge may order any person to produce testamentary papers.

55. (1) The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person.

(2) If it is not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined respecting the same.

(3) Such person shall be bound to answer truly such questions as may be put to him by the Court, and, if so ordered to produce and bring in such paper or writing, and shall be subject to the like punishment under the Travancore Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default.

(4) The costs of the proceeding shall be in the discretion of the Judge.

Proceedings of the District Judge's Court in relation to probate and administration.

56. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure of 1100,

When and how District Judge to interfere for protection of property.

57. During the pendency of an application for the grant of a probate or of letters of administration, the District Judge may interfere for the protection of the property of the deceased at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage; and for that purpose, he may appoint any person to take and keep possession of the property.

When probate or administration may be granted by District Judge.

58. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the persons applying for the same that the testator or intestate, as the case may be, had at the time of his decease a fixed place of abode, or any property, movable or immovable within the jurisdiction of the Judge.

Disposal of application made to Judge of District in which deceased had no fixed abode.

59. When the application is made to a District Judge within whose jurisdiction the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration to grant them absolutely, or limited to the property within his own jurisdiction.

Probate and letters of administration may be granted by Delegate.

60. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had a fixed place of abode within the jurisdiction of such delegate.

Conclusiveness of probate or letters of administration.

61. Probate or letters of administration shall have effect over all the property, movable or immovable of the deceased throughout Travancore,

and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him,

and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the persons to whom such probate or letters of administration shall have been granted.

Conclusiveness of application for probate or administration if properly made and verified.

62. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorising the grant of probate or administration and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by fraud upon the Court.

Petition for probate.

63. (1) Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will, or, in the cases mentioned in Section 25, 26 and 27, a copy, draft or statement of the contents thereof annexed and stating,

(*a*) the time of the testator's death,

(*b*) that the writing annexed is his last will and testament,

(*c*) that it was duly executed,

(*d*) the amount and particulars of assets which are likely to come to the petitioner's hands, and

(*e*) when the application is for probate, that the petitioner is the executor named in the will.

(2) In addition to these particulars, the petition shall further state—

(*a*) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some property, situate within the jurisdiction of the Judge,

(*b*) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate, and

---

**Sec. 62:** Section 275 of the Indian Act has the word "only" after the word "reason."

(c) when the application is to a District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another district the nature and amount of such assets in each district.

In what cases translation of will to be annexed to petition.

64. In cases wherein the will, copy or draft is written in any language other than English or the language of the Court, there shall be a translation thereof into the language of the Court annexed to the petition by any person competent to translate the same, and such translation shall be verified by that person in the following manner :—

"I (A. B.) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

Petition for letters of administration.

65. Application for letters of administration shall be made by petition distinctly written as aforesaid, and stating,

(a) the time and place of the deceased's death,

(b) the family or other relatives of the deceased, and their respective residences,

(c) the right in which the petitioner claims,

(d) the amount of assets which are likely to come to the petitioner's hands,

(e) when the application is to a District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge,

(f) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate, and

(g) when the application is to a District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another district the nature and amount of such assets in each district.

Petition for probate or administration to be signed and verified.

66. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect :

"I (A. B.), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

Verification of petition for probate by one witness to will.

67. Where the application is for probate or for letters of administration with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following:—

"I (C. D.), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (or mark) thereto (or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

Punishment for false averment in petition or declaration.

68. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be deemed to have committed an offence under Section 187 of the Travancore Penal Code.

Powers of District Judge.

69. (1) In all cases the District Judge or District Delegate

(*a*) may examine the petitioner in person upon oath;

(*b*) may require further evidence of the due execution of the will or the right of the petitioner to the letters of administration as the case may be; and

(*c*) shall issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

(2) The citation shall be fixed up in some conspicuous part of the Court-house and also in the office of the Division Peishkar of the District and otherwise published or made known in such manner as the District Judge or District Delegate issuing the same may direct.

---

**Sec. 69**: Sub-section (1) of the corresponding Section (283) of the Indian Act runs thus:—"(1) In all cases the District Judge or District Delegate may, if he thinks proper, (*a*) examine.........(*b*) require.........(*c*) issue citations......or letters of administration."

The closing words of Sub-section (3) of Section 283 are:—"to the District Judge who issued the citation."

(3) Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of another District Judge, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued in citation.

Caveats against grant of probate or administration.

70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate:

and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had a fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

71. The caveat shall be made as nearly as circumstances admit in the form given below:

"Let nothing be done in the matter of the estate of A. B., late of..............deceased, who died on the...........day of.........., at........, without notice to C. D. of..............".

After entry of caveat no proceeding taken on petition until after notice to caveator.

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court may think reasonable.

District Delegate when not to grant probate or administration.

73. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

*Explanation.*—"Contention" means the appearance of any one in person, or by his recognised agent or by a pleader, duly appointed to act on his behalf, to oppose the proceeding.

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Power to transmit statement to District Judge in doubtful cases where no contention.

75. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge;

Procedure where there is contention or District Delegate thinks probate or letters of administration should be refused in his Court.

unless the District Delegate thinks it necessary for the purposes of justice to impound the same, which he is hereby authorised to do; and in that case the same shall be sent by him to the District Judge.

76. When it appears to the District Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in the form given below:—

Grant of probate to be under seal of Court.

"I.............., Judge of the district of.............., [or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate's jurisdiction)] hereby make known that on...the day of......in the year...... the last will of......, late of......, a copy whereof is hereunto annexed was proved and registered before me and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to.............., the executor in the said will, named, he having undertaken to administer the same and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court

Form of such grant.

a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.

The......................day of...........19......"

Grant of letters of administration to be under seal of Court.

77. When it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of a will annexed, should be granted, he shall grant the same under the seal of his Court in the form given below :—

Form of such grant.

"I........, Judge of the district of........, [or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate's jurisdiction)] hereby make known that on the........day of......letters of administration (with or without the will annexed, as the case may be) of the property and credits of........late of........, deceased were granted to........, the son (or as the case may be) of the deceased, he having undertaken to administer the same and to make a full and true inventory of the said property and credits, and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.

The......................day of............"

Administration bond.

78. (1) Every person to whom any grant of letters of administration is committed and if the Judge so direct, any person to whom probate is granted, shall give a bond to the Judge of the District Court, to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge may from time to time, by general or special order, direct.

(2) The District Judge may, for reasons to be recorded, demand a like bond from any person to whom probate is granted.

Sec. 78:—The following words in Sub-section (1) do not occur in Section 291 of the Indian Act :—" and if the Judge so direct, any person to whom probate is granted"; "to enure for the benefit of the Judge for the time being." Also in Sub-section (2), the words "for reasons to be recorded" do not occur in the corresponding Sub-section of Section 291.

Assignment of administration bond.

79. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept,

and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit,

assign the same to some person, his executors or administrators,

who shall thereupon be entitled to sue on the said bond in his or their own name or names as if the same had been originally given to him or them instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustees for all persons interested, the full amount recoverable in respect of any breach thereof.

Time for grant of probate and administration.

80. No probate of a will shall be granted until after the expiration of seven clear days and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator's or intestate's death.

Filing of original wills of which probate or administration with will annexed granted.

81. Every District Judge or District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed have been granted by him;

and the High Court with sanction of Our Government may make rules for the preservation and inspection of the wills so filed as aforesaid.

Grantee of probate or administration alone to sue, etc., until same revoked.

82. After any grant of probate or letters of administration no one other than the person to whom the same may have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, until such probate or letters of administration has or have been recalled or revoked.

Procedure in contentious cases.

83. In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1100, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant.

Payment to executor or administrator before probate or administration revoked or annulled.

84. When a grant of probate or letters of administration is revoked or annulled, all payments *bona fide* made to any executor or administrator under such grant before the revocation or annulment thereof shall, notwithstanding such revocation or annulment, be a legal discharge to the person making the same;

Right of such executor or administrator to recoup himself.

and the executor or administrator who has acted under any such revoked or annulled grant may retain and reimburse himself in respect of any payments made by him which the person to whom probate or letters of administration may afterwards be granted might have lawfully made.

Power to refuse letters of administration.

85. Notwithstanding anything hereinbefore contained, it shall be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Regulation.

Removal of executor or administrator and provision for successor.

86. The District Judge may on application made to him suspend, remove or discharge any executor or administrator, and provide for the succession of another person to the office of any such executor or administrator who may cease to hold office, and the vesting in such successor of any property belonging to the estate.

Directions to executor or administrator.

87. Where probate or letters of administration in respect of any estate has or have been granted under this Regulation, the District Judge may, on application made to him give to the executor or administrator any general or special directions in regard to the estate or in regard to the administration thereof.

Appeals from orders of District Judge.

88. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure, 1100, applicable to appeals.

## CHAPTER VI.

## Of Executors of their own wrong.

Executor of his own wrong.

89. A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong.

*Exceptions*.—(1) Intermeddling with the goods of the deceased for the purpose of preserving them or providing for his funeral or for the immediate necessities of his family or property, does not make an executor of his own wrong.

(2) Dealing in the ordinary course of business with goods of the deceased received from another does not make an executor of his own wrong.

*Illustrations.*

(i) A uses or gives away or sells some of the goods of the deceased or takes them to satisfy his own debt or legacy or receives payment of the debts of the deceased. He is an executor of his own wrong.

(ii) A, having been appointed agent by the deceased in his lifetime to collect his debts and sell his goods, continues to do so after he has become aware of his death. He is an executor of his own wrong in respect of acts done after he has become aware of the death of the deceased.

(iii) A sues as executor of the deceased, not being such. He is an executor of his own wrong.

Liability of executor of his own wrong.

90. When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands after deducting payments made to the rightful executor or administrator, and payments made in due course of administration.

## CHAPTER VII.

## Of the Powers of an Executor or Adminstrator.

In respect of causes of action surviving deceased and debts due at death.

91. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased and may exercise the same power for the recovery of debts as the deceased had when living.

Demands and rights of suit of or against deceased survive to and against executor or administrator.

92. All demands whatsoever and all rights to prosecute or defend any action or other proceeding, existing in favour of, or against, a person at the time of his decease, survive to, and against, his executors or administrators, except causes of action for defamation, assault as defined in the Travancore Penal Code, or other personal injuries not causing the death of the party, and except, also, cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.

*Illustrations.*

(a) A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

(b) A sues for divorce. A dies. The cause of action does not survive to his representative.

Power of executor or administrator to dispose of property.

93. (1) Subject to the provisions of Sub-section (2), an executor or administrator has power to dispose of the property of the deceased vested in him under Section 5 either wholly or in part in such manner as he may think fit.

*Illustrations.*

(a) The deceased had made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it. The sale is valid.

(b) The executor in the exercise of his discretion mortgages a part of the immovable estate of the deceased. The mortgage is valid.

(2) (i) The power of an executor to dispose of an immovable property so vested in him is subject to any restriction which may be imposed in this behalf by the will appointing him, unless probate has been granted to him and the Court which granted the probate permits him by an order in writing, notwithstanding the restriction, to dispose of any immovable property specified in the order in a manner permitted by the order.

(ii) An administrator may not without the previous permission of the Court by which the letters of administration were granted:—

(a) mortgage, charge or transfer by sale, gift, exchange or otherwise any immovable property for the time being vested in him under Section 5, or

(b) lease any such property for a term exceeding five years.

(iii) A disposal of property by an executor or administrator in contravention of clause (i) or clause (ii), as the case may be, is voidable at the instance of any other person interested in the property.

(3) Before any probate or letters of administration is or are granted in such a case, there shall be endorsed thereon or annexed thereto a copy of Sub-section (1) and clauses (i) and (iii) of Sub-section (2) or of Sub-section (1) and clauses (ii) and (iii) of Sub-section (2), as the case may be.

(4) A probate or letters of administration shall not be rendered invalid by reason of the endorsement or annexure required by Sub-section (3) not having been made thereon or attached thereto, nor shall the absence of such an endorsement or annexure authorise an executor or administrator to act otherwise than in accordance with the provisions of this Section.

General powers of administration.

94. An executor or administrator may, in addition to, and not in derogation of, any other powers of expenditure lawfully exercisable by him, incur expenditure—

(a) on such acts as may be necessary for the proper care and management of any property belonging to any estate administered by him, and

(b) with the sanction of the District Judge on such religious, charitable and other objects, and on such improvements, as may be reasonable and proper in the case of such property.

Commission or agency charges.

95. An executor or administrator shall not be entitled to receive or retain any commission or agency charges at a rate higher than that which may be fixed by the High Court from time to time.

Purchase by executor or administrator of deceased's property.

96. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Powers of several executors or administrators exercisable by one.

97. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out the administration.

*Illustrations.*

(*a*) One of several executors has power to release a debt due to the deceased.

(*b*) One has power to surrender a lease.

(*c*) One has power to sell the property of the deceased, movable or immovable.

(*d*) One has power to assent to a legacy.

(*e*) One has power to endorse a promissory note payable to the deceased.

(*f*) The will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

Survival of powers on death of one of several executors or administrators.

98. Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

Powers of administrator of effects unadministered.

99. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator during minority.

100. An administrator during minority has all the powers of an ordinary administrator.

## CHAPTER VIII.

## Of the Duties of an Executor or Administrator.

As to deceased's funeral ceremonies.

101. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

Inventory and account.

102. (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may appoint, exhibit in that Court an inventory containing a full and true estimate of

all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character,

and shall, in like manner, within one year from the grant or within such further time as the said Court may appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.

(2) The High Court may from time to time prescribe the form in which an inventory or account under this Section is to be exhibited.

(3) If an executor or administrator on being required by the Court to exhibit an inventory or account under this Section intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under Section 169 of the Travancore Penal Code.

(4) The exhibition of an intentionally false inventory or account under this Section shall be deemed to be an offence under Section 187 of the Travancore Penal Code.

As to property of, and debts owing to, deceased.

103. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

Expenses to be paid before all debts.

104. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased and death-bed charges including fees for medical attendance and board and lodging for one month previous to his death, shall be paid before all debts.

Expenses to be paid next after such expenses.

105. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, shall be paid next after the funeral expenses and death-bed charges.

Wages for certain services to be next paid, and then other debts.

106. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artisan or domestic servant shall next be paid and then the other debts of the deceased according to their respective priorities (if any).

**107.** Save as aforesaid, no creditor shall have a right of priority over another.

*Save as aforesaid, all debts to be paid equally and rateably.*

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

**108.** Debts of every description must be paid before any legacy.

*Debts to be paid before legacies.*

**109.** If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

*Executor or administrator not bound to pay legacies without indemnity.*

**110.** If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions;

*Abatement of general legacies.*

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

**111.** When there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

*Non-abatement of specific legacy when assets sufficient to pay debts.*

**112.** Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

*Right under demonstrative legacy, when assets sufficient to pay debts and necessary expenses.*

**113.** If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

*Rateable abatement of specific legacies.*

*Illustration.*

A has bequeathed to B a diamond ring valued at 500 rupees and to C a horse valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets after payment of debts, are only 900 rupees. Of this sum 300 rupees should be paid to B and 600 rupees to C.

Legacies treated as general for purpose of abatement.

114. For the purpose of abatement a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

---

## CHAPTER IX.

## Of Assent to a Legacy by Executor or Administrator.

Assent necessary to complete legatee's title.

115. The assent of the executor or administrator is necessary to complete a legatee's title to his legacy.

*Illustrations.*

(a) A, by his will, bequeathes to B his Government paper, which is in deposit with the Imperial Bank of India. The Bank has no authority to deliver the securities nor B a right to take possession of them, without the assent of the executor or administrator.

(b) A, by his will, has bequeathed to C his house in Trivandrum in the tenancy of B. C is not entitled to receive the rents without the assent of the executor or administrator.

Effect of executor's assent to specific legacy.

116. The assent of the executor or administrator to a specific bequest shall be sufficient to divest his interest as executor or administrator therein and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

This assent may be verbal, and it may be either express or implied from the conduct of the executor or administrator.

*Illustrations.*

(a) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatees. Assent to the legacy is implied.

(b) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d) Executors die after paying all the debts of the testator but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

Conditional assent.

**117.** The assent of an executor or administrator to a legacy may be conditional, and if the condition is one which he has a right to enforce, and it is not performed, there is no assent.

*Illustrations.*

(a) A bequeathes to B his lands of Quilon which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

Assent of executor to his own legacy.

**118.** When the executor or administrator is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied.

Implied assent.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor or administrator.

*Illustration.*

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

Effect of executor's assent.

**119.** The assent of the executor or administrator to a legacy gives effect to it from the death of the testator.

*Illustrations.*

(a) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b) A bequeathes 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

120. An executor or administrator is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Executor when to deliver legacies.

*Illustration.*

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

---

CHAPTER X.

## Of the Payment and Apportionment of Annuities.

121. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

Commencement of annuity when no time fixed by will.

122. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor or administrator thinks fit, be paid when due; but the executor or administrator shall not be bound to pay it till the end of the year

When annuity, to be paid quarterly or monthly, first falls due.

123. Where there is a direction that the first payment of an annuity shall be made within one month or other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorises the first payment to be made;

and, if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

Dates of successive payments, when first payment directed to be made within given time, or on day certain.

---

CHAPTER XI.

## Of the Investment of Funds to provide for Legacies.

124. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may by any general rule authorise or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of sum bequeathed where legacy, not specific, given for life.

125. Where a general legacy is given to be paid at a future time, the executor or administrator shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding Section.

Investment of general legacy, to be paid at future time.

The intermediate interest shall form part of the residue of the testator's estate.

126. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may by general rule authorise or direct.

Procedure when no fund charged with or appropriated to annuity.

127. Where a bequest is contingent, the executor or administrator is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

Transfer to residuary legatee of contingent bequest.

128. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Investment of residue bequeathed for life with direction to invest in specified securities.

129. Such conversion and investment as are contemplated by the last preceding Section shall be made at such times and in such manner as the executor or administrator thinks fit; and, until such conversion and investment are completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent per annum upon the market value (to be computed as at the date of the testator's death) of such part of the fund as has not been so invested.

Time and manner of conversion and investment.

130. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District

Procedure where minor entitled to immediate payment or possession of bequest and no direction to pay to person on his behalf.

Judge by whom, or by whose District Delegate, the probate was, or letters of administration with the will annexed were, granted to the account of the legatee;

and such payment into the Court of the District Judge shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of such securities as the High Court may by general rule authorise or direct, and the same, with the interest thereon, shall be transferred or paid to the person entitled thereto or otherwise applied for his benefit, as the Judge may direct.

---

## CHAPTER XII.

### Of the Produce and Interest of Legacies.

131. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Legatee's title to produce of specific legacy.

*Exception.*—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

*Illustrations.*

(*a*) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are property of B.

(*b*) A bequeathes his Government of India securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(*c*) The testator bequeathes all his four per cent. Government of India promissory notes to A when he shall complete the age of 18. A, if he completes that age, is entitled to receive the notes, but the interest which accrues in respect of them between the testator's death and A's completing 18, forms part of the residue.

132. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Residuary legatee's title to produce of residuary fund.

*Exception.*—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed

between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

*Illustrations.*

(*a*) The testator bequeathes the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(*b*) The testator bequeathes the residue of his property to A when he shall complete the age of 18. A, if he completes that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

133. When no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Interest when no time fixed for payment of general legacy.

*Exception.*—(1) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

134. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Interest when time fixed.

*Exception.*—Where the testator was a parent or a remote ancestor of the legatee, or has put himself in the place of a parent of the legatee and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

135. The rate of interest shall be six per cent. per annum.

Rate of interest.

136. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

No interest on arrears of annuity within first year after testator's death.

137. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

Interest on sum to be invested to produce annuity.

CHAPTER XIII.

## Of the Refunding of Legacies.

138. When an executor or administrator has paid a legacy under the order of a Court, he is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

Refund of legacy paid under Judge's order.

139. When an executor or administrator has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

140. (1) When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor or administrator has thereupon, without fraud, distributed the assets, in such case, if further time has, under Sub-section (2), been allowed for the performance of the conditions, and the condition has been performed accordingly, the legacy cannot be claimed from the executor or administrator, but those to whom he has paid it are liable to refund the amount.

Refund when legacy becomes due on performance of condition within further time allowed.

(2) Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

141. When the executor or administrator has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

When each legatee compellable to refund in proportion.

---

Sec. 140: Section 358 of the Indian Act does not contain Sub-section (2).

142. Where an executor or administrator has given such notices as the High Court may, by any general rule, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he shall not have had notice at the time of such distribution :

Distribution of assets.

Provided that nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may follow assets.

143. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies and whether the payment of the legacy by the executor or administrator was voluntary or not.

Creditor may call upon legatee to refund.

144. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund, under the last preceding Section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When legatee, not satisfied or compelled to refund under Section 143, cannot oblige one paid in full to refund.

145. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call upon a satisfied legatee to refund, first proceed against the executor or administrator if he is solvent; but if the executor or administrator is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

When unsatisfied legatee must first proceed against executor, if solvent.

146. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Limit to refunding of one legatee to another.

*Illustration.*

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees and D to refund 120 rupees.

**147.** The refunding shall, in all cases, be without interest.

Refunding to be without interest.

**148.** The surplus or residue of the deceased's property after payment of debts and legacies shall be paid to the residuary legatee when any has been appointed by the will.

Residue after usual payments to be paid to residuary legatee.

**149.** Where a person not having his domicile in Travancore has died leaving assets both in Travancore and in the country in which he had his domicile at the time of his death,

Transfer of assets from Trvancore to executor or administrator in country of domicile for distribution.

and there has been a grant of probate or letters of administration in Travancore with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country,

the executor or administrator, as the case may be, in Travancore after having given such notices as are mentioned in Section 142 and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of,

may, instead of himself destributing any surplus or residue of the deceased's property to persons residing out of Travancore who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

## CHAPTER XIV.

## Of the Liability of an Executor or Administrator for Devastation.

**150.** When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Liability of executor or administrator for devastation.

*Illustrations.*

(*a*) The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(*b*) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss.

(*c*) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

Liability for neglect to get in any part of property.

**151.** When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

*Illustrations.*

(*a*) The executor absolutely releases a debt due to the deceased from a solvent person or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount.

(*b*) The executor neglects to sue for a debt till the debtor is able to plead that the claim is barred by limitation, and the debt is thereby lost to the estate. The executor is liable to make good the amount.

---

## CHAPTER XV.

### Miscellaneous.

Saving clause.

**152.** Nothing herein contained shall—

(*a*) validate any testamentary disposition which would otherwise have been invalid;

(*b*) invalidate any such disposition which would otherwise have been valid; or

(*c*) deprive any person of any right of maintenance to which he would otherwise have been entitled.

Probate and administration to be granted only under this Regulation.

**153.** (1) No proceedings to obtain probate of a will, or letters of administration to the estate of any deceased person, shall be instituted in any Court in Travancore except under this Regulation.

---

**Sec. 153:** This Section does not occur in the Indian Act. Sub-section (2) was added by the Council, on the motion of a Non-official Member who said :—"In probate proceedings and in proceedings in relation to letters of administration it is often a question whether the executor and the persons who may enter the caveat with respect to the will, are liable personally or the estate should be rendered liable for the

(2) The Court shall have power to order the payment of costs in proceedings under this Regulation, in accordance with such rules as may be framed by the High Court in this behalf, making the estate of the deceased or the parties personally liable for the same as it deems fit in the circumstances of the case.

Surrender of revoked probate or letters of administration.

154. (1) When a grant of probate or letters of administration is revoked or annulled under this Regulation, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

(2) If such person wilfully and without sufficient cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment which may extend to three months, or with both.

---

costs in connection with the proceedings. That is often a question that crops up before the Court, but unfortunately the British Indian Act itself does not provide anything for that. Again, the question of costs has been noticed by the Bombay High Court where their Lordships observed that as it stands no power is vested in a Court to award costs on anything like the higher scale and such proceedings are dealt with as miscellaneous case for the purpose of costs.

In England they have got graduated scales with respect to the costs. It is clear that if the case is such as the Court would deem it necessary to order the payment of costs from the estate of the deceased, the Court should have power in that behalf. If the Court finds that one of the parties before the Court is to be blamed in connection with the protraction of the proceedings or the very origination of the proceedings, then the Court may make him personally liable for the costs incurred by the opposite side. The costs as between party and party and party and pleader may be provided for by the Court for the purposes of this Regulation. Therefore I suggest that the High Court may be allowed to regulate the costs.

* * * *

"The identical section in the British Indian Act has been the subject of comment. In the matter of suits, there is a basis to calculate the costs. That is, the institution fee would generally be the guiding factor. But in this matter no such foundation is available. The contentions may be very serious and interests involved may be very heavy. In such a case whether the matter should be treated as a mere miscellaneous proceeding by the Courts of Travancore is a question for consideration. The Bombay High Court deplored that they have no power to treat it except as a miscellaneous proceeding. Such being the case when property of very serious value is in litigation before the Court in connection with the probate sought for, the High Court may be requested to frame rules for the award of costs. That is the object of the amendment. I thought that such a provision was necessary and I press it."— *L. C. P., dated 16-4-1928,*

155. In Section 3 of the Succession Certificate Regulation, IX of 1090, in the first sentence, the following shall be added, namely:—

Amendment of Section 3, Succession Certificate Regulation.

"or of a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased including the debt in question."

156. The grant of probate or letters of administration under this Regulation in respect of any property shall be deemed to supersede any certificate previously granted in respect of the same property under the Succession Certificate Regulation, 1090; and when at the time of the grant of such probate or letters of administration any suit or other proceeding instituted by the holder of such certificate regarding such property is pending, the person to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding:

Grant of probate or administration to supersede certificate under Regulation IX of 1090.

Provided that when any certificate is superseded under this Section all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

157. In the Court Fees Regulation, VI of 1087, Schedule I, after Article IX, the following Article shall be inserted, namely:—

Insertion of a new Article X in Schedule I, Court Fees Regulation, VI of 1087.

| | | |
|---|---|---|
| "X. Probate of a will or letters of administration with or without will annexed. | When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, but does not exceed ten thousand rupees. | Two per centum on such amount or value. |
| | When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees. | Two and one-half per centum on such amount or value. |
| | When such amount or value exceeds fifty thousand rupees. | Three per centum on such amount or value. |

Provided that, when after the grant of the certificate under the Succession Certificate Regulation, IX of 1090, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant."

Insertion of a new Chapter "I-A" in the Court Fees Regulation.

158. In the Court Fees Regulation, VI of 1087, after Chapter I, the following Chapter shall be inserted, namely:—

"CHAPTER I-A.

**Probate and Letters of Administration.**

Notice of application for probate or letters of administration to be given to Revenue authorities and procedure thereon.

13-A. (1) Where an application for probate or letters of administration is made to any Court, the Court shall cause notice of the application to be given to the Division Peishkar.

(2) The Division Peishkar within the local limits of whose revenue jurisdiction the property of the deceased or any part thereof is, may at any time inspect, or cause to be inspected, and take or cause to be taken copies of the record of any case in which application for probate or letters of administration has been made; and if, on such inspection or otherwise, he is of opinion that the petitioner has under-estimated the value of the property of the deceased, the Division Peishkar may, if he thinks fit, require the attendance of the petitioner (either in person or by agent), and take evidence and inquire into the matter in such manner as he may think fit, and if he is still of opinion that the value of the property has been under-estimated, may require the petitioner to amend the valuation.

(3) If the petitioner does not amend the valuation to the satisfaction of the Division Peishkar, the Division Peishkar may move the Court before which the application for probate or letters of administration was made to hold an inquiry into the true value of the property:

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by Section 102, Travancore Probate and Administration Regulation, 1105.

(4) The Court, when so moved as aforesaid, shall hold or cause to be held an inquiry accordingly and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. The Division Peishkar shall be deemed to be a party to the inquiry.

(5) For the purpose of any such inquiry, the Court or person authorised by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commission) and may take such further evidence as may be produced to prove the true value of the property. The person authorised as aforesaid to hold the inquiry shall return to the Court the evidence taken by him and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceedings, and the Court may record a finding in accordance with the report unless it is satisfied that it is erroneous.

(6) The finding of the Court recorded under Sub-section (4) shall be final, but shall not bar the entertainment and disposal by the Division Peishkar of any application under Section 13-F.

(7) Our Government may make rules for the guidance of the Division Peishkar and persons deputed by them in the exercise of the powers conferred by Sub-section (2).

Relief where too high a court fee has been paid.

13-B. Where any person, on applying for the probate of a will or letters of administration, has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a court fee thereon, if within six months after the true value of the property has been ascertained such person produces the probate or letters to the Division Peishkar of the Division in which the probate or letters has or have been granted,

and delivers to the Division Peishkar a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation,

and if the Division Peishkar is satisfied that a greater fee was paid on the probate or letters than the law required,

the said Division Peishkar may—

(a) cancel the stamp on the probate or letters, if such stamp has not been already cancelled :

(b) substitute another stamp for denoting the court fee which should have been paid thereon : and

(c) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

Relief where debts due from a deceased person have been paid out of his estate.

13-C. Whenever it is proved to the satisfaction of the Division Peishkar that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduce the same to a sum which, if it had been the whole gross amount or value of the estate would have occasioned a less court fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Regulation,

the Division Peishkar may return the difference, provided the same be claimed within three years after the date of such probate or letters :

but, when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the Division Peishkar may allow such further time for making the claim as may appear to be reasonable under the circumstances.

Relief in cases of several grants.

13-D. Whenever a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Regulation has been or is

paid thereon, no fee shall be chargeable under the same Regulation when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Regulation shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

Probates declared valid as to trust property, though not covered by court fee.

13-E. The probate of the will or the letters of administration of the effects of any person deceased shall be deemed valid and available by his executors or administrators for recovering, transferring, or assigning any movable or immovable property whereof or whereto the deceased was possessed or entitled, either wholly or partially, as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court-fee was paid on such probate or letters of administration.

Provision for case where too low a court fee has been paid on probates, etc.

13-F. (1) Where any person, on applying for probate or letters of administration, has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a court fee thereon, the Division Peishkar of the Division in which the probate or letters has or have been granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, move the District Judge who granted the probate or letters of administration to hold an enquiry.

(2) The Judge after following the procedure prescribed in Section 13-A, sub-sections (4) and (5), may record a finding as to the valuation of the estate. The Court may direct that the probate or letters of administration be duly stamped on payment to the Division Peishkar of the full court fee which ought to have been originally paid thereon in respect of such value, and of the further penalty, if the probate or letters is or are produced within one year from the date of the grant, of not more than twice, or if it or they, is or are produced after one year from such date of not more than five times, such proper court fee without any deduction of court fee originally paid :

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery

that too low a court fee was at first paid on the probate or letters, and if the Court is satisfied that such fee was paid in consequence of a mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court fee; the Court may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

(3) The District Judge shall communicate his decision to the Division Peishkar.

Administrator to give proper security before letters stamped under Section 13-E.

13-G. In the case of probate or letters of administration on which too low a court fee has been paid at first, the Division Peishkar shall not cause the same to be duly stamped in manner aforesaid, until the executor or administrator has given such security to the Court by which the probate or letters of administration has or have been granted as ought to have been given on the granting thereof, in case the full value of the estate of the deceased had been then ascertained.

Executors, etc., not paying full court fee on probate, etc., within six months after discovery of under-payment.

13-H. Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular parts of the estate belong to the deceased, if any executor or administrator acting under such probate or letters does not, within six months after the discovery of the mistake, or of any effects not known at the time to have belonged to the deceased, apply to the Division Peishkar, and pay what is wanting to make up the court fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of two hundred rupees, and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper court-fee.

Payment of court fees in respect of probates and letters of administration.

13-I. (1) No order entitling the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the third schedule, and the Court is satisfied that the fee mentioned in Article X of the first schedule has been paid on such valuation.

(2) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the Division Peishkar under Section 13-A, Sub-section (3).

13-J. (1) Any excess fee found to be payable on an inquiry held under Section 13-A, Sub-section (5), and any penalty or forfeiture under Section 13-H, may, on the certificate of the Division Peishkar, be recovered from the executor or administrator as if it were an arrear of land revenue by any Tahsildar in any part of Travancore.

Recovery of penalty.

(2) The Division Peishkar may remit the whole or any part of any penalty or forfeiture as aforesaid, or any part of any penalty under Section 13-F, or of any court fee under Section 13-F, in excess of the full court-fee which ought to have been paid.

13-K. Nothing in Section 3 or Section 19 shall apply to probate or letters of administration."

Sections 3 and 19 not to apply to probates and letters of administration.

159. In the Court Fees Regulation, VI of 1087, Schedule II, after Article VII, the following Article shall be inserted, namely :—

Insertion of a new Article "VII-A" in the Court Fees Regulation.

"VII-A., Caveat „ Five rupees."

160. In the Court Fees Regulation, VI of 1087, after Schedule II, the following schedule shall be added, namely :—

Addition of a new Schedule "III" in the Court Fees Regulation.

"SCHEDULE III.

(SEE SECTION 13-I.)

Form of valuation (to be used with such modification, if any, as may be necessary.)

In the Court of..........................................................................

Re Probate of the Will of ....................(or Administration of the property and credits of..................), deceased.

I,..............................................,........,solemnly affirm... ................
make oath

and say that I am the executor (or one of the executors or one of the next-of-kin) of......................., deceased, and that I have truly set forth in Annexure A to this affidavit all the property and credits of which the above-named

deceased died possessed or was entitled to at the time of his death, and which have come or are likely to come, to my hands.

2. I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct.

3. I further say that the said assets, exclusive only of such last-mentioned items, but inclusive of all rents, interests, dividends, and increased values since the date of the death of the said deceased, are under the value of ".

## ANNEXURE A.

| | Rs. | ch. | c. |
|---|---|---|---|
| Valuation of the movable and immovable property of deceased. | | | |
| Cash in the house and at the banks, household goods, wearing apparel, books, plate, jewels, etc. | | | |
| (State estimated value according to best of Executor's or Administrator's belief.) | | | |
| Property in any Government Securities. | | | |
| (State description and value at the price of the day ; also the interest, separately calculating it to the time of making the application.) | | | |
| Immovable property, consisting of | | | |
| (State description, giving, in the case of houses, the assessed value, if any, and the number of years' assessment the market-value is estimated at, and in the case of land, the area, the market value, and all rents that have accrued.) | | | |
| Leasehold property. | | | |
| (If the deceased held any leases for years determinable, state the number of years' purchase the profit rents are estimated to be worth and the value of such, inserting separately arrears due at the date of death, and all rents received or due since that date to the time of making the application.) | | | |
| Property in public companies. | | | |
| (State the particulars and the value calculated at the price of the day ; also the interest separately, calculating it to the time of making the application.) | | | |

| | Rs. | ch. | c. |
|---|---|---|---|
| Policy of insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills, notes and other securities for money. | | | |
| (State the amount of the whole; also the interest separately, calculating it to the time of making the application.) | | | |
| Book debts. | | | |
| (Other than bad.) | | | |
| Stock in trade. | | | |
| (State the estimated value, if any.) | | | |
| Other property not comprised under the foregoing heads (State the estimated value, if any.) | | | |
| Total. | | | |
| Deduct amount shown in Annexure B not subject to duty. | | | |
| Net Total. | | | |

---

## ANNEXURE B.

SCHEDULE OF DEBTS, ETC.

| | Rs. | ch. | c. |
|---|---|---|---|
| Amount of debts due and owing from the deceased, payable by law out of the estate. | | | |
| Amount of funeral expenses. | | | |
| Amount of mortgage-incumbrances. | | | |
| Property held in trust not beneficially or with general power to confer a beneficial interest. | | | |
| Other property not subject to duty. | | | |
| Total. | | | |

# APPENDICES.

# APPENDIX A.

## RULES AND NOTIFICATIONS.

## REGULATION V OF 1063 (*Revenue Summons*).

### GOVERNMENT NOTIFICATIONS.

(1)

(*Dis. No. 73 of 27/ Revenue, dated 13/16th January 1927.*)

Under Section 10 of the Revenue Summons Regulation, V of 1063, as amended by Regulation V of 1099, it is hereby notified that all Division Assistants are hereby authorised to exercise, under Section 7 of the Regulation, the power vested in a Division Peishkar, of entertaining and disposing of appeals against orders of the Tahsildars, in the Taluks constituted as Revenue Sub-divisions and placed under their immediate charge, by G. O. Dis. No. 317 of 23/ Revenue, dated the 31st March 1923. Appeals from the orders of the Division Assistants in these cases will lie to the Land Revenue and Income-Tax Commissioner.— *T. G. G., dated 18-1-1927, Pt. I, P. 302.*

(2)

(*R. Dis. No. 501/28/ Rev. dated 7th March 1929.*)

Under sanction of Her Highness the Maha Rani Regent, it is hereby notified, under Section 10 of Regulation V of 1063, as amended by Regulation V of 1099, that Notification No. 644/ L. R. & F issued under date the 21st January 1913 and published at page 185, Part I, of the Gazette dated the 28th January 1913 investing the Division Assistants with powers to issue summons under the Regulation is amended as follows :—

***Substitute the following for the existing paragraph 2 of the Notification:—***

" Appeals from orders passed by the Division Assistants will lie to *the Land Revenue and Income-Tax Commissioner*, under Section 7 of the Regulation."— *T. G. G., dated 19-3-1929, Pt. I, P. 465.*

[See Vol. I, Page 64.]

(3)

*(R. Dis. No. 501/29/Rev., dated 7th March 1929.)*

It is hereby notified, with the sanction of Her Highness the Maha Rani Regent, that Government Notification Dis. No. 73 of 27/ Revenue, dated the 13th/ 16th January 1927, authorising the Division Assistants to exercise, under Section 7 of the Revenue Summons Regulation, V of 1063, as amended by Regulation V of 1099, the power vested in a Division Peishkar of entertaining and disposing of appeals against orders of the Tahsildars in the Taluks constituted as Revenue Sub-divisions and placed under their immediate charge, by G. O. Dis. No. 317/23/ Revenue, dated the 31st March 1923, is hereby cancelled.

2. Clause (15) of paragraph 1 of G. O. Dis. No. 317/3/Rev., referred to above, is also hereby expunged.—*T. G. G., dated 19-3-1929, Pt. I, p. 465.*

---

## REGULATION V OF 1067 (*Criminal Procedure Code*).

### I. RULES.

*(R. Dis. No. 2489 of 25/Judl., dated 21st November 1925.)*

The following Rules regarding the amelioration of the condition of the under-trial and short-term prisoners are sanctioned by Her Highness the Maha Rani Regent, under date the 10th/12th November 1925, for the guidance of the Magistracy. These Rules shall come into force at once.

(1) The local Magistrate shall be primarily responsible for the well-being of remanded and short-term convicted prisoners confined in Police Stations.

(2) He shall, if resident in the place in which the Police Station is located, not less often than once a week, and if resident elsewhere, not less often than once a month inspect all such prisoners and the cells in which they are confined and shall satisfy himself that the prisoners are properly treated and receive the prescribed food, bedding and clothing, and that all sanitary arrangements are correctly carried out.

(3) The local Medical Officer shall at least once a week examine such prisoners and inspect the cells in which they are confined. He shall satisfy himself that both are clean and that prisoners are receiving proper attention. He shall also inspect the raw articles of food and the same when cooked, and shall see that the water supply is from a protected source, that the latrines and sanitary utensils are kept thoroughly clean, and that all sanitary and bathing arrangements are properly carried out.

(4) All remarks and orders passed by Magistrates and all recommendations made by Medical Officers shall be recorded in a special book to be maintained in every Police Station.—

*T. G. G. dated 24-11-1925, Pt. IV, Judl. Dept., P. 54.*

## II. GOVERNMENT NOTIFICATIONS.

(1)

*(R. Dis. No. 255 of 27/ Judl., dated 29th January 1927.)*

Under Section 12-A of Regulation V of 1067, as amended by Regulation VI of 1097, it is hereby notified that any three or more of the Special Magistrates appointed in the Municipality of Mavelikara may sit together as a Bench of Magistrates to try all criminal cases arising within the Municipal limits of Mavelikara in regard to the offences mentioned in Section 236-A A of the said Regulation.— *T. G. G., dated 1-2-1927, Pt. I, P. 353.*

(2)

*(Dated 29th January 1927.)*

Under Section 236-A A of Regulation V of 1067, as amended by Regulation VI of 1097, the Second Class Bench Magistrates' Court at Mavelikara is hereby empowered to try summarily the offences mentioned in that Section.— *T. G. G., dated 1-2-1927, Pt. I, P. 353.*

(3)

*(D. Dis. No. 2323 of 26/ Judl., dated 18th August 1926.)*

In modification of Government Notification No. R. O. C. 1028/ Judicial, dated the 4th November 1922, it is hereby notified under Section 12 of Regulation V of 1067, as amended by Regulation VI of 1097 that the Second Class Bench Magistrates' Court, Tiruvella, shall try all such criminal cases as are triable by them and as arise not only within the limits of the Tiruvella Municipality but also within the remaining portions of Tiruvella and Kavumbhagom Pakuthies as well as the whole of Nedumpuram and Peringara Pakuthies in Tiruvella Taluk.—

*T. G. G., dated 24-8-1926, Pt. IV, Judl. Dept., P. 6.*

[See Vol. 1, Page 561.]

(4)

By G. O. R. Dis. No. 1266/28 Judicial, dated 16th May 1928, the Honorary Second Class Bench Magistrates' Court at Parur, was abolished.—

*T. G. G, dated 5-6-1928, Pt. I, Pp. 692-693.*

[See Vol. 1, Pp. 560-561.]

(5)

*(R. Dis. No. 1 of 30/Judl., dated 3rd January 1930.)*

Under Section 8 of the Code of Criminal Procedure, it is hereby notified, with the sanction of Her Highness the Maha Rani Regent, that the territorial limits of the several Districts in the State are fixed as shown below.—

| *Name of District.* | *Included Taluks (as reconstituted by G.O., R. Dis. No. 1039 of 22/Judl., dated the 2nd/8th May 1923.)* |
|---|---|
| The Trivandrum District. | Thovala, Agastiswaram, Kalkulam, Vilavancode, Neyyattinkara, Trivandrum, Neduvangad and Chirayinkil. |
| The Quilon District. | Quilon, Karunagapalli, Karthikapalli, Kunnathur, Kottarakara, Ambalapuzha, Mavelikara, Tiruvalla, Pattanamtitta, Pattanapuram and Shencotta. |
| The Kottayam District. | Changanacherry, Kottayam, Shertallai, Vaikom, Minachil, Moovattupuzha, Kunnathunad, Thodupuzha and Parur. |
| The Devicolam District. | Devicolam and Peermade.— |

*T. G. G., dated 7-1-1930, Pt. I, P. 311.*

## III. CRIMINAL CIRCULARS.

(1)

It has come to the notice of the High Court that copies of documents signed by the presiding Officers of the subordinate Criminal Courts prepared either for delivery to the parties or their Vakils or for preservation in the office do not mention the name of the signatory and his official designation and that the provisions of the High Court Proceedings dated 19th Kumbhom 1075 enjoining legibility of signatures of all Judges, Munsiffs and Magistrates are not acted up to.

The High Court therefore invite the attention of all the subordinate Criminal Courts to the Proceedings referred to above and direct that the signatures of the presiding Officers of the subordinate Criminal Courts appearing in documents signed by them shall be legible and that copies of such documents prepared either for delivery to the parties or their Vakils or for preservation in the office shall mention the name of the signatory and his official designation.— *Cr. Cir.* **No. I of 1103.**

(2)

It has come to the notice of the High Court that the provisions of Article 134 of the Travancore Service Regulations which require that when a Government Official is judicially convicted, a copy of the decision should be sent to the Head of the Department in which he is employed and those of Criminal Circular No. 13 of 1073 requiring Criminal Courts including Sessions Courts trying any public servant to communicate the result of the case to the Head of the Department and Criminal Circular No. 3 of 1086 providing that copy of judgment commenting on the conduct of Government servants shall be sent to the Head of the Department are not always observed.

The High Court therefore direct that in future all Criminal Courts including Sessions Courts shall invariably comply with the requisitions contained in the aforesaid Article of the Travancore Service Regulations and the Criminal Circulars referred to above.— *Cr. Cir.* No. 2 of 1103.

(3)

The Criminal Courts including the Courts of Session are directed as far as possible to avoid summoning Mahomedan witnesses and parties or otherwise enforcing their attendance in Courts on Friday.—*Cr. Cir.* No. 3 of 1103.

## REGULATION I OF 1068 (*Revenue Recovery*).

### GOVERNMENT NOTIFICATIONS.

(1)

(*R. Dis. No. 327/29/Rev., dated 7th February 1929.*)

It is hereby notified for the information of the public and for the guidance of the Officers of the Land Revenue Department that, under sanction of Her Highness the Maha Rani Regent, the following procedure is laid down in regard to the collection of land revenue due to one Taluk from Pattadars resident in other Taluks:—

(1) Ordinarily only the demand notice under Section 23-A of the Revenue Recovery Regulation shall in the first instance be served on defaulters who are resident in a Taluk other than that in which the land is situate and the Tahsildar of the Taluk where the defaulter resides shall be required only to have the notice duly served and not to realise the amount covered by the notice.

(2) The revenue due on any land shall be paid to the Proverthicar of the Pakuthi where the land is situate either in person or by money

order or through an agent. The voluntary payment of revenue in a Pakuthi or Taluk other than that in which the land is situate shall in no circumstances be accepted.— *T. G. G., dated 12-2-1929, Pt. I, P. 345.*

(2)

*(R. Dis. No. 1350/1928 Rev., dated 26th September 1929.)*

It has come to the notice of Government that, in cases of sales of immovable properties for arrears of Public Revenue, the defaulters sometimes remit the dues in the Taluk before the expiry of 30 days, but make no formal application for setting aside the sale, as expressly required by Section 33-A (1) of the Revenue Recovery Regulation I of 1068. The public are hereby informed that unless a written application for setting aside the sale is presented to the Division Peishkar as required by that Section when making the deposit, the sale is liable to be confirmed in spite of such deposit and action in strict conformity with the provisions of the Section is therefore necessary to entitle them to the relief sought for. It is also hereby notified that a written application addressed to the Dewan Peishkar may at the time of making the deposit be presented to the Tahsildar who will transmit the same to the Division Peishkar for orders. The application is liable to payment of a court fee of half a rupee under the Court Fees Regulation and should be filed in the Tahsildar's Office.—

*T. G. G., dated 2-10-1929, Pt. I, P. 89.*

(3)

*(D. Dis. No. 685/29/Rev., dated 13th April 1929.)*

With the sanction of Her Highness the Maha Rani Regent, it is hereby notified that applications under Section 50 of the Revenue Recovery Regulation, I of 1068, as amended by Regulations III of 1087, VIII of 1094, X of 1097 and II of 1099, for revision of the orders passed or proceedings taken by a Division Peishkar, Tahsildar or Proverthicar under the provisions of that Regulation should be presented within sixty (60) days from the date of the order sought to be revised and that applications preferred after the expiry of that period will be rejected unless sufficient cause is shown for not presenting the same within the prescribed period. In computing the period of limitation, the day on which the order sought to be revised was pronounced and the time taken for obtaining a copy of the order shall be excluded.—

*T. G. G., dated 16-4-1929, Pt. I, P. 577.*

(4)

*(R. Dis No. 532/26/G. B., dated 2nd December 1926.)*

It is hereby notified that the Assistant Commissioner of Devaswoms, Ambalapuzha, the Superintendent of Devaswoms, Mavelikara Group, and the Chandirakaran of the Vattakad Personal Deposit Devaswom are invested with the powers of a Dewan Peishkar, a Tahsildar and a Proverthicar, respectively under Section 58 of the Revenue Recovery Regulation, I of 1068, as amended by Regulations VIII of 1094, X of 1097 and II of 1099, for the collection of revenue due to the Vattakad Personal Deposit Devaswom.—

*T. G. G., dated 7-12-1926, Pt. I, P. 179.*

---

(5)

*(R. Dis. No. 224 of 27/G. B., dated 15/16th June 1927.)*

Under Section 58 of the Revenue Recovery Regulation, I of 1068, as amended by Regulations III of 1087, VIII of 1094, X of 1097 and II of 1099, it is hereby notified that the Manager of the Perumbavoor Personal Deposit Devaswom and the ten Personal Deposit Devaswoms mentioned at foot is invested with the powers of a Proverthikar for the collection of the rents and other dues of the Devaswoms. The powers of a Proverthikar already conferred on the Vicharippukaran of the Mookkannur Koottala Personal Deposit Devaswom and the Srikariakars of the Thiruvalur and Thirumuzhikulam Devaswoms and the powers of a Tahsildar conferred on the Superintendent of Devaswoms, Trikariyur Group, in respect of the Perumbavur Devaswom as per Notification R. Dis. No. 121/25/G. B., dated the 27th February 1925, published on page 283 of the Devaswom Sheet of the Gazette dated the 3rd March 1925, are hereby withdrawn and the Superintendent of Dewaswoms, Alwaye Group, is invested instead with powers of a Tahsildar in respect of the Perumbavur Personal Deposit Devaswom.

(1) Mookkannur Koottala
(2) Chirakkal
(3) Vallopalli
(4) Kurangazhippu
(5) Esanimattom
(6) Alangadukavu
(7) Kottayattukavu
(8) Chirangara
(9) Narayanamangalam.
(10) Kongorpalli.

*T. G. G., dated 21-6-1927, Pt. I, P. 892.*

---

(6)

*(R. Dis. No. 1886/28/Devpt., dated 8th October 1928.)*

Under Section 58 of the Revenue Recovery Regulation, I of 1068, it is hereby notified, with the sanction of Her Highness the Maha Rani Regent,

that the Excise Inspectors are invested with the powers of a Tahsildar in respect of issuing demand notices and attaching moveable properties of a grantee of the privilege of vending toddy, arrack, or opium and ganja, for the collection of abkari and opium revenue.—

*T. G. G., dated 16-10-1928, Pt. I, P. 119.*

---

(7)

*(R. Dis. No. 105/29 Ml., dated 21st February 1929.)*

Under Section 58 of the Revenue Recovery Regulation, I of 1068, as amended by Regulations, III of 1087, VIII of 1094, X of 1097 and II of 1099, it is hereby notified, with the sanction of Her Highness the Maha Rani Regent, that the Sanitary Inspector and the Aminadars under the Municipal Council, Thiruvella, are authorised by virtue of their offices, to exercise all the powers conferred by that Regulation on Tahsildars and Proverthicars, respectively, for the collection of Municipal dues. Notification R. Dis. No. 59/25, Rev. and L. G., dated the 16th February 1925, published on page 279 of the Gazette dated the 24th February 1925, is amended accordingly, as follows :—

| | | |
|---|---|---|
| For "Thiruvella | Aminadar | Proverthicar |
| | Overseer | Do." |
| Substitute "Thiruvella | Sanitary Inspector | Tahsildar |
| | Aminadars | Proverthicars".— |

*T. G. G., dated 26-2-1929, Pt. I, P. 414.*

---

(8)

*(Dis. No. 191/29/ Ml., dated 27th April 1929.)*

With the sanction of Her Highness the Maha Rani Regent, it is hereby notified that the Revenue Inspector under the Municipal Council, Kottayam, has been invested by virtue of office, with the powers of a Tahsildar under Section 58 of the Revenue Recovery Regulation, I of 1068, as amended by Regulations III of 1087, VIII of 1094, X of 1097 and II of 1099, for the collection of Municipal dues in the Town of Kottayam.—

*T. G. G., dated 30-4-1929, Pt. I, P. 626.*

[ *See* Vol. I, Page 629. ]

---

(9)

*(R. Dis. No. 787/29/ Ml., dated 9th September 1929.)*

Under Section 58 of the Revenue Recovery Regulation, I of 1068, as amended by Regulations III of 1087, VIII of 1094, X of 1097 and II of 1099,

it is hereby notified, with the sanction of Her Highness the Maha Rani Regent, that the Overseer under the Municipal Council, Kuzhithura, is authorized by virtue of his office to exercise the powers of a Proverthicar, for the collection of Municipal dues. Notification R. Dis. No. 59/25/ Revenue and L. G., dated the 16th February 1925, published on Page 279 of the Gazette dated the 24th February 1925, is amended accordingly as follows :—

| | | | | |
|---|---|---|---|---|
| Under "4. Kuzhithura | | 1. | President | Division Peishkar |
| | | 2. | Sanitary Inspector | Tahsildar |
| | | 3. | Aminadar | Proverthicar" |
| | Added | "4. | Overseer | Do." |

*T. G. G., dated 17-9-1929, Pt. I, P. 48.*

[ *See* Vol. I, Page 628. ]

(10)

*(R. Dis. No. 811/29/ Mis., dated 12th September 1929.)*

Under Section 58 of the Revenue Recovery Regulation, I of 1068, as amended by Regulations III of 1087, VIII of 1094, X of 1097 and II of 1099, it is hereby notified, with the sanction of Her Highness the Maha Rani Regent, that the Accountant, Vadavathur Devaswom, is authorised by virtue of his office to exercise the powers conferred by that Regulation on a Proverthicar, for the collection of arrears of revenue due to the Vijayapuram Personal Deposit Devaswom in the Thiruvarpu Group.—

*T. G. G., dated 17-9-1929, Pt. I, P. 49.*

[ *See* Vol. I, Page 631. ]

(11)

ERRATUM NOTICE.

*R. Dis. No. 350/25/ G. B., dated 5th June 1925.)*

Adverting to column 3 of the list attached to the Notification R. Dis. No. 121/25/ G. B., dated 27th February 1925, published on page 283 of the Devaswom sheet of the Gazette dated 3rd March 1925, read "Nagercoil Group" and "Do" for "Do" and "Do" against the two Devaswoms, Thanuvalingaswami and Marukathala Kandan Sastha, items 5 and 6 in the list.—

*T. G. G., dated 30-6-1925, Pt. IV, Devaswom Dept., P. 479.*

[ *See* Vol. I, Page 630. ]

## REGULATION II OF 1068 (*Forest*).

### GOVERNMENT NOTIFICATIONS.

(1)

(*Dated 28th June 1927.*)

Under sanction of Her Highness the Maha Rani Regent, it is hereby notified for general information that the sanction accorded to the rates fixed for the grazing and penning of foreign cattle in the Government forests of the Southern Division tentatively for one year from the 1st Medom 1100 under Notification R. Dis. No. 1553 of 25/Devpt., dated the 29th August 1925, and continued for another year from 1st Medom 1101, under Notification R. Dis. No. 843/26/Devpt., dated the 8th May 1926, is hereby withdrawn.—

*T. G. G., dated 5-7-1927, Pt. I, P. 919.*

[*See* Vol. I, P. 727.]

(2)

(*R. Dis. No. 1162 of 28/Devpt., dated 19th June 1928.*)

Under sanction of Her Highness the Maha Rani Regent, it is hereby notified that paragraph 19 of the Rules dated the 25th November 1921, passed under Sections 31, 32, 33 and clause (*d*) of Section 60 of the Forest Regulation. II of 1068, as amended by Regulations IV of 1071, IX of 85, IV of 89 and VIII of 97, are further amended as follows:—

*Paragraph 19.*—(1) Delete the words "Deputy Tahsildar" occurring in line 2 and substitute the words, "Revenue Supervisor."

(2) Delete the phrase "of rank not lower than that of the Forester" occurring after the words "Forest Officers" in line 3 of the paragraph.— *T. G. G., dated 26-6-1928, Pt. I, P. 753.*

[*See* Vol. I, Page 743.]

## REGULATION III OF 1072 (*Irrigation*).

### GOVERNMENT NOTIFICATION.

(*R. O. C. 1780/26/Rev., dated 12th November 1927.*)

Under paragraph 2 of Section 20 of the Rules for the constitution of Irrigation Boards in South Travancore, it is hereby notified for general information that the water cess (both arrears and current) imposed on the

lands lying within the Irrigation Block Boards named at foot will be collected by the Proverthicars of the Pakuthies in which the areas included in the blocks lie, under the control of the Tahsildars concerned, subject to the condition that each of the Board pays a commission of 5 per cent. of the amount collected to the Revenue agency which makes the collection for the Boards.

*Names of Block Boards.*

1. Thadikkaranconam block.
2. Ulakkaruvi block.
3. Devendran block.
4. Kadukkarai block.
5. Alathurayar block.
6. Avayaramman block.
7. Azhakamman block.
8. Layam block.
9. Krishnan block.
10. Veeramony block.
11. Minchin block.
12. Kuriyan block.
13. Thalakudy block.
14. Natchiyar Pudukulam block.
15. Vellamadam block.
16. Veeranallur block.
17. Vembar block.
18. Marthandanalloor block.
19. Navalcaud block.
20. Edappara block.
21. Darisanamcope block.

*T. G. G., dated 22-11-1927, Pt. I, P. 167.*

---

## REGULATION II OF 1073 (*Epidemic Diseases.*)

---

### GOVERNMENT NOTIFICATION.

*(R. O. C. No. 4758 of 27/G. A., dated 3rd December 1927.)*

In exercise of the powers conferred by Section 2 of the Epidemic Diseases Regulation, II of 1073, the Government of Her Highness the Maha Rani Regent of Travancore are hereby pleased to make the following Rule:—

"In the revised Travancore Plague Rules, under Section 2 of Regulation II of 1073, sanctioned by Her Highness the Maha Rani Regent, under date the 1st October 1924, after Rule 13, add the following as Rule 14, namely:—

"The Government may, for the purpose of these Rules and Standing Orders relating thereto, appoint any person, by name or virtue of his office, to be a Division Peishkar for any specified local area or with respect to any specified local area, vest in any person, by name or virtue of his office, all or any of the functions pertaining to a Division Peishkar, Commissioner or any

other Officer under these Rules or the Standing Orders. The Government may also direct whether the person so appointed or vested shall exercise his functions as such, concurrently with or to the exclusion and independently of the Division Peishkar, Commissioner, or other Officer to whom the functions pertain under the preceding Rules and the Standing Orders."—

*T. G. G., dated 6-12-1927, Pt. I, P. 194.*

[ *See* Vol. II, Page 500. ]

## REGULATION IV OF 1073 (*Abkari*).

### I. GOVERNMENT NOTIFICATIONS.

(1)

(*R. O. C. No. 22 of 28/Devpt., dated 3rd March 1928.*)

In exercise of the powers conferred by Section 20 of the Abkari Regulation, IV of 1073, it is hereby notified that the rates of tree-tax prescribed by Rule 5 of the Tree-Tax Rules published under Notification No. S. R. 836 dated 16th April 1914, as amended by Notification R. O. C. No. 5030/25/ Devpt., dated 1st April 1926, are revised and fixed as follows with effect from 1st Chingom 1104, throughout the whole State except the Devicolam Taluk:—

| *Kind of tree.* | *Rate of Tree-tax.* | | | *Period.* |
|---|---|---|---|---|
| | Rs. | as. | p. | |
| 1. Cocoanut | 3 | 8 | 0 | Each half year. |
| 2. Palmyra | 1 | 14 | 0 | Do. |
| 3. Sagopalm or Choondapana | 7 | 0 | 0 | Do. |

*T. G. G., dated 6-3-1928, Pt. IV, Excise Dept., P. 77.*

[ *See* Vol. II, Page 599. ]

(2)

(*R. Dis. No. 1886/28/Devpt., dated 8th October 1928.*)

Under Sections 4 (*f*) and (*g*), 5 and 26 (*o*) of the Abkari Regulation, IV of 1073, and Section 6 (*b*), (*d*) and (*e*) of the Opium Regulation, IV of 1090, it is hereby notified with the sanction of Her Highness the Maha Rani Regent—

(1) that the Assistant Excise Commissioners are authorised to have the security deposits of shop-keepers within their jurisdictions, pledged to them and to make adjustments therefrom when needed; and

(2) that the Excise Inspectors are authorised to fine shop-keepers up to Rs. (5) five at a time, for infraction of any of the conditions of the license.— *T. G. G., dated 16-10-1928, Pt. I, P. 118.*

[*See* Vol. II, P. 578.]

(3)

(*R. O. C. 108/28/Devpt., dated 23rd April 1929.*)

In modification of Notification No. R. Dis. 223/1/26/Devpt., dated 26th January 1926, published on Page 111 of the Excise sheet of the Government Gazette dated 2nd February 1926/20th Makarom 1101, it is hereby notified, under Sections 8 and 11 of the Abkari Regulation IV of 1073, that the maximum quantity of arrack (jaggery and toddy) that any person may transport and have in his possession without a license within the Municipal limits of Changanacherry Town is fixed at 1/24th of an Imperial gallon or (2) two drams.— *T. G. G., dated 30-4-1929, Pt. I, P. 640.*

[*See* Vol. II, P. 617.]

(4)

(*R. Dis. No. 710/29/Devpt., dated 1st May 1929.*)

In exercise of the power conferred by Section 26 of the Abkari Regulation, IV of 1073, the Government of Her Highness the Maha Rani Regent direct that, in supersession of all previous Notifications on the subject, all preparations containing not more than 0·1 per cent of Cocaine shall be exempted from Excise restrictions in the State.

*T. G. G., dated 7-5-1929, Pt. I, P. 652.*

[*See* Vol. II, Page 630.]

(5)

(*Excise Commissioner's Notification, dated 23rd February 1928.*)

In the memorandum dated 7th April 1909 upon the law, rules and procedure relating to the importation of foreign liquor into Travancore published on page 75 of the Excise sheet in the Travancore Government Gazette dated 27th April 1909/15th Medom 1084:—

1. Add the following as a sub-clause to clause 7 :—

"In cases of import from British India, the import permit issued to the applicant should be produced before the foreign authority and a British export permit obtained to cover the quantity of liquor mentioned in the import permit."

2. In clause 8 instead of "copy of permit" insert "copies of both the import and export permits."—

*T. G. G., dated 13-3-1928, Pt. IV, Excise Dept., P. 142.*

[ *See* Vol. II, P. 1452. ]

---

## II. GOVERNMENT PROCEEDINGS.

*( Order R. Dis. No. 1886/Devpt., dated 11th October 1928. )*

The powers of the Excise Commissioner, the Assistant Excise Commissioners and the Excise Inspectors are enhanced as below with effect from the 1st Thulam 1104.

### A. DISCIPLINARY POWERS.

* * *

### B. ADMINISTRATIVE POWERS.

*I. Abkari, Opium and Ganja.*

1. Power is delegated to the Excise Commissioner to authorise any person to possess such quantity of opium or intoxicating drugs as his special authority will cover.

2. Power is delegated to the Assistant Excise Commissioners to have the security deposits of the contractors of toddy, arrack and opium and ganja shops within their jurisdiction being pledged to them and to make adjustments from such deposits when needed.

3. Power is delegated to the Excise Inspectors—

(*a*) to exercise the powers of a Tahsildar under the Revenue Recovery Regulation in respect of issuing demand notices and attaching movables for the collection of abkari revenue, and

(*b*) to fine licensees up to Rs. 5 five at a time.

*II. Tobacco.*

1. Power is delegated to the Excise Commissioner to write off the accounts tobacco which has been found unfit for consumption in the bankshalls and ordered to be destroyed by him.

2. Power is delegated to the Assistant Excise Commissioners—

(*a*) to grant rewards to persons described in Rules 77 of the Tobacco Rules dated 5th July 1913, provided that the aggregate amount of the reward granted in any one case shall not exceed Rs. 25, and

(*b*) to incur, at his discretion, an expenditure not exceeding Rs. 15 in each case for the employment of informers or for any purpose connected with the prevention and detection of tobacco smuggling or of any other offence against the Tobacco Law, subject to the distribution of the budget grant of the year for the purpose.

*III. Salt.*

1. Power is delegated to the Assistant Excise Commissioner—

(*a*) to arrange for the construction and maintenance of the works mentioned in Section 29 of Regulation III of 1088, carried out to his satisfaction;

(*b*) to order the sale or destruction of salt stored for more than five years and recover the cost from the licensee under Rule 6 (19) of the Salt Rules;

(*c*) to prescribe the dates for the commencement and closure of the manufacture of salt in each factory under Rule 22;

(*d*) to prescribe the time for the removal of salt to the drying grounds under Rule 26;

(*e*) to fix the drying ground to which salt from each pan shall be removed, the platform on which it shall be stored and the route by which salt shall be removed from the pans to the drying grounds or from the drying grounds to the place of storage, as the case may be, under Rule 27;

(*f*) to set apart, in every factory, suitable places to serve as drying grounds and storage platforms, under Rule 29;

(*g*) to order storage of salt on holidays, if necessary, under Rule 38;

(*h*) to issue instructions, under Rule 43, from time to time, to the licensees in regard to the matters relating to storage not provided for in the Rules; and

(*i*) to fix the time for the removal of salt under Rule 64.

2. Power is delegated to the Excise Inspector—

(*a*) to direct, at his discretion, that salt manufactured by two or more licensees, shall be stored jointly under Rule 33, and

(*b*) to take such steps as he may consider necessary for the storage of salt, should a licensee fail to store his salt within 6 days of written notice sent to him by the Inspector and to recover the cost of such storage from the licensee, under Rule 39.

Notifications will issue under the Abkari Regulation, IV of 1073, the Opium Regulation, IV of 1090, the Tobacco Regulation, I of 1087, and the Revenue Recovery Regulation, I of 1068, investing the Officers with the powers under Abkari, Opium and Tobacco, referred to above. The Excise Commissioner will, in virtue of the powers vested in him under Section 5 of the Salt Regulation III of 1088, issue the necessary notifications for investing the Assistant Excise Commissioner and the Excise Inspectors with the powers delegated to them as regards the administration of salt revenue.—

*T. G. G., dated 16-10-1928, Pt. I, Pp. 117-118.*

[*See* Vol. I, P. 578.]

---

## REGULATION III OF 1079 (*Hindu Religious Endowments*).

---

### I. RULES.

*(No. D. 2203, dated 7th July 1917.)*

The following Rules for exercising superintendence over the management of the Vempannur Kandan Sastha temple in Pallichal Pakuthi, Neyyattinkara Taluk, are passed by the Government under Section 16 of the Hindu Religious Endowments Regulation, III of 1079, under date the 30th June 1917 corresponding to the 17th Mithunom 1092 :—

1. The local Proverthikar shall be ex-officio manager of the Vempannur Kandan Sastha Coil and shall be paid out of the temple funds. He shall work under the orders and control of the Taluk Tahsildar.

2. The manager shall submit to Government, through the Tahsildar of the Neyyattinkara Taluk, a budget of receipts and expenditure three months before the beginning of the year to which it relates.

3. The manager shall act in accordance with the budget sanctioned by the Government and shall be responsible for the proper conduct of all the affairs of the Devaswom, including the collection of all dues for the temple from the holders of the immovable properties, the Thanathil Kidappu as well as Thiruppuvarom.

4. A personal deposit account shall be opened in the Treasury in the name of the Devaswom, the collection in money being remitted into it and withdrawn by means of warrants. (Repayment Bills). The paddy should be in the custody of the Proverthikar.

5. Monthly accounts of receipts and expenditure should be rendered by the manager in the form that may be prescribed for the purpose.

6. The Tahsildar shall inspect the Devaswom from time to time and submit his reports to Government through the Dewan Peishkar.

7. The manager is authorised to conduct civil and criminal suits on behalf of the Devaswom.— *T. G. G., dated 10-7-1917, Pt. I, P. 770.*

---

## II. GOVERNMENT NOTIFICATIONS.

(1)

*(No. L. R. 3615/2851 of 1908, dated 30th April 1920.)*

Under Section 15 of the Hindu Religious Endowments Regulation, III of 1079, as amended by Regulation III of 1092, it is hereby notified, with the sanction of His Highness the Maha Raja, that the rents and other dues of the Pattazhi Devaswom, Pathanapuram Taluk, will be collected as arrears of public revenue under the provisions of the Revenue Recovery Regulation, I of 1068, as amended by Regulations III of 1087 and VIII of 1094.—

*T. G. G., dated 4-5-1920, Pt. I, P. 480.*

---

(2)

*(No. D. 2040, dated 20th July 1920.)*

It is hereby notified, under sanction of His Highness the Maha Raja, that Rule (1) of the Rules dated the 31st October 1914, framed under Section 16 of the Hindu Religious Endowments Regulation, III of 1079, for the superintendence over the management of the Thirunavaikulam Devaswom, Chirayinkil Taluk, is amended as follows :—

(1) "The Akavoor Namburipad, who is the *Samudayam* of the Devaswom, shall submit to the Government, for sanction annually, through the Tahsildar of the Chirayinkil Taluk, a budget of receipts and expenditure of the Devaswom, three months before the commencement of the year to which the budget relates."— *T. G. G., dated 3-8-1920, Pt. I, P. 831.*

[*See* Vol. II, P. 1263.]

---

## REGULATION IV OF 1080 (*Stamp*).

---

### GOVERNMENT NOTIFICATION.

*(R. O. C. No. 3445 of 26/Rev., dated 3rd December 1928.)*

In exercise of the powers conferred by Section 10, clause (*a*), of the Travancore Stamp Regulation, IV of 1080, the stamp duty with which the

class of instruments described below is chargeable is hereby remitted with he sanction of Her Highness the Maha Rani Regent with effect from the 23rd November 1928/8th Vrischikom 1104.

CLASS OF INSTRUMENT.

Lease deed executed under the Kuthakapattom Rules dated the 3rd July 1914 in respect of any lease the period of which does not exceed twelve years and the annual rent does not exceed rupees fifty.—

*T. G. G., dated 4-12-1928, Pt. I, P. 206.*

---

## REGULATION V OF 1084 (*Arms*).

---

### GOVERNMENT NOTIFICATIONS.

(1)

(*R. Dis. No. 2986/29/Judl., dated 23rd/25th November 1929.*)

In exercise of the powers conferred by Section 23 of the Travancore Arms Regulation, V of 1084, the Government of Her Highness the Maha Rani **Regent** are pleased to direct that the following amendment shall be made in the Travancore Arms Rules, 1098, namely :—

In the first column of Schedule I to the said Rules, for the entry relating to item 1, the following shall be substituted, namely:—

"(1) The Dewan, the Judges of the High Court, the Commissioner of Police, the Land Revenue and Income-Tax Commissioner and the District Magistrates."— *T. G. G., dated 26-11-1929, Pt. I, P. 230.*

[*See* Vol. III, Page 116.]

---

(2)

(*R. Dis. No. 438 of 30/ Judl., dated 17th February 1930.*)

Referring to Government Notification R. Dis. No. 962 of 1923/ Judicial, dated the 27th March 1923, published at page 763 of Part I of the Government Gazette dated 3rd April 1923, it is hereby notified that the words "a month" are substituted for the words "a fortnight" occurring in the first sentence of Rule 9-A of the Revised Arms Rules of 1097.—

*T. G. G., dated 18-2-1930, Pt. I, P. 497.*

[*See* Vol. III, Page 107.]

---

## REGULATION II OF 1086 (*Cattle Trespass*).

### GOVERNMENT NOTIFICATIONS.

(1)

*(Dis. No. 181/28 L. G., dated 10th April 1928.)*

In modification of Notification Dis. No. 287/26 L. G., dated the 25th June 1926, published on page 373, Municipal sheet of the Government Gazette, dated the 29th June 1926/15th Mithunom 1101, it is hereby notified under the proviso to Section 12 of the Cattle Trespass Regulation, IV of 1086, as amended by Regulations VII of 1090 and II of 1093, that, for every head of cattle of the kind mentioned below which may be seized within the Municipal limits of Alleppey and impounded as per Sections 10 and 11 of the said Regulation, the Pound keeper shall levy a fine according to the following scale from the date of publication of this Notification in the Gazette.

Buffalo, Bull, Bullock, Cow..............Chs. (14) fourteen.
Calf, Ass or Pig.................................." (8) eight.
Ram, Ewe, Sheep, Lamb, Goat or Kid..." (4) four.

*T. G. G., dated 17-4-1928, Pt. I, P. 582.*

(2)

*(R. Dis. No. 316 of 30/Judicial, dated 5th February 1930.)*

Whether it has come to the notice of the Government that cattle in the Vandiperiyar, Pambanar and Mundakayam tracts are habitually let loose and allowed to trespass on lands and into buildings and to damage crops, it is hereby notified, under Section 12 of Regulation IV of 1086 that double the fine prescribed in the above Section will be levied on every head of cattle specified therein, which may be seized and impounded within the tracts mentioned above with effect from the 1st Kumbhom 1105.—

*T. G. G., dated 11-2-1930, Pt. I, 469.*

## REGULATION I OF 1087 (*Tobacco*).

### GOVERNMENT NOTIFICATIONS.

(1)

*(R. Dis. No. 1886/28/Devpt., dated 8th October 1928.)*

In exercise of the powers conferred by Section 31 of Regulation I of 1087, it is hereby notified with the sanction of Her Highness the Maha Rani

Regent, that the words "may make a recommendation to the Government for" occurring in Rule 35 of the Tobacco Rules dated the 5th July 1913, are deleted.— *T. G. G., dated 16-10-1928, Pt. I, P. 119.*

[ *See* Vol. III, P. 244. ]

(2)

*( R. Dis. No. 1096 of 29/Devpt., dated 29th June 1929. )*

In exercise of the powers conferred by Section 31 of the Travancore Tobacco Regulation, I of 1087, passed under date 28th September 1911/12th Kanni 1087, the Government of Her Highness the Maha Rani Regent have been pleased to amend Clause 1, Rule 61, of the Tobacco Rules dated 5th July 1913, as follows:—

The word "Range" shall be substituted for the word Taluk" where it first occurs in the Clause, and for the word " Taluk' occurring last, the words " Range, or the Taluk in which the retail shop is located" shall be substituted.— *T. G. G., dated 9-7-1929, Pt. I, P. 818.*

[ *See* Vol. III, P. 252. ]

(3)

*(R. Dis. No. 1886/28/Devpt., dated 8th October 1928.)*

In exercise of the powers conferred by Section 31 of Regulation I of 1087, it is hereby notified with the sanction of Her Highness the Maha Rani Regent, that Rules 82, 83 and 89 of the Tobacco Rules dated the 5th July 1913, are deleted and the following substituted therefor:—

" *Rule 82.* It shall be competent for the Excise Commissioner and the Assistant Excise Commissioners to grant rewards in such proportion as they may think fit to the persons described in Rule 77, provided that the aggregate amount of the rewards granted in any one case shall not exceed rupees one hundred and rupees twenty-five respectively. The Excise Commissioner shall obtain the sanction of the Government for rewards exceeding one hundred rupees in any one case.

*Rule 83.* It shall be competent for the Excise Commissioner and the Assistant Excise Commissioners to incur, at their discretion, expenditure not exceeding Rs. (35) thirty-five and Rs. (15) fifteen respectively in each case for the employment of informers or for any purpose connected with the prevention or detection of tobacco smuggling or for any other offence against the Tobacco Law. The aggregate expenditure incurred by the Excise Commissioner in one year under this head shall not exceed rupees two hundred, while the expenditure that may be incurred by the Assistant Excise Commissioners shall be subject to the distribution of budget grant for the purpose.

*Rule 89.* Whenever a reward is to be granted under Rule 77, the Officer in charge of the Division shall grant the same, under Rule 82, as soon as the period mentioned in Rule 86 in regard to a case detected within the limits of his jurisdiction has expired. In case he is not competent to do so, he should forward to the Excise Commissioner, in such form as the latter may prescribe in this behalf, a statement of the case as also a recommendation respecting the reward to be granted. On receipt of such statement, the Excise Commissioner may pass such orders as he may deem fit under Rule 82 or make his own recommendation to the Government in case he is not competent to pass any orders under the said Rule."—

*T. G. G., dated 16-10-1928, Pt. I, P. 119.*

[ *See* Vol. III, Pp. 257-258. ]

---

## REGULATION II OF 1087 (*Registration*).

---

### GOVERNMENT NOTIFICATIONS.

(1)

( *R. Dis. No. 1394/28/Judicial, dated 1st June 1928.* )

It is hereby notified that Rule 1 *(b)* of Part III of the Proceedings of the Government of Her Highness the Maha Rani Regent, R. Dis. No. 1918 of 27/Judicial, dated, Trivandrum, 15/21st July 1927, regarding the revised powers of Sub-Registrars, is amended as follows:—

"*(b)* to grant

(i) any kind of leave to any officer whom he is competent to appoint

(ii) casual leave to any officer subordinate to him."—

*T. G. G., dated 5-6-1928, Pt. I, P. 693.*

[ *See* Vol. III, Page 366 ]

---

(2)

( *R. Dis. No. 599 of 29/Judl., dated 28th February 1929.* )

Under sanction of Her Highness the Maha Rani Regent, it is notified for general information that the following provision is added as Rule 104-A of the Rules under Section 64 of the Registration Regulation, II of 1087, issued under Government Notification No. J. 6287 dated the 9th July 1920 and published in the Gazette dated the 10th July 1920.

"*Rule No. 104-A.*—These Rules do not contemplate the return of a document by Anchal or Post, but a document may be so returned if a presentant or his nominee desires this course to be followed, and at his own risk, subject to the conditions mentioned below:—

(i) The presentant or his nominee shall sign an endorsement on the counterfoil of the receipt authorising the return of the document by registered Anchal or Post to an address to be specified and shall deposit a sum in cash to cover the postage, the Anchal or Postal registration fee, and the fee for obtaining the acknowledgment of the addressee.

(ii) When a person presenting two or more documents for registration at the same time desires that they should be returned by Anchal or Post to the same address, the actual cost of postage, registration and acknowledgment shall be deposited and separate deposits shall not be required in respect of each document.

(iii) The amount paid shall be included in the receipt granted to the party.

(iv) When registration has been completed, the registering officer shall despatch the document or documents in a sealed cover under registered service Anchal or Post to the address specified and shall note the fact on the counterfoil of the receipt.

(v) The acknowledgment of the addressee shall be pasted to the counterfoil."— *T. G. G., dated 5-3-1929, Pt. I, P. 445.*

[*See* Vol. III, Page 343.]

---

## REGULATION III OF 1088 (*Salt*).

---

### RULES.

(*R. Dis. No. 1442/28/Devpt., dated 6th August 1928.*)

The following Rules are passed under Section 77 of the Salt Regulation, III of 1088, for regulating the matters described in Sub-sections (*c*) and (*d*) thereof, with the sanction of Her Highness the Maha Rani Regent of Travancore.

1. (*a*) Licensees desiring to remove salt under bond shall apply to the Excise Commissioner through the Assistant Excise Commissioner, Salt Factories Division, before the 15th Chingom each year for a certificate of authority therefor.

(b) Such application shall specify the quantity of salt which the licensee desires to remove under bond and shall be accompanied by earnest money of Bh. Rs. 250 on every 10,000 maunds of salt applied for.

NOTE:—The minimum quantity of salt for the removal of which a certificate of authority will be given is 10,000 maunds.

(c) The Assistant Excise Commissioner shall forward the application with his recommendation thereon to the Excise Commissioner who will allow or reject the application after due consideration of the circumstances of each case.

(d) If the application is rejected the earnest money will be refunded to the licensee. If the application is allowed, the licensee will be granted by the Excise Commissioner a certificate of authority to remove the salt specified in the certificate on his executing an agreement in such form and under such conditions as may be prescribed by the Excise Commissioner, and on his depositing a security of Bh. Rs. 1,000 for every 10,000 maunds, including the earnest money of Bh. Rs. 250 already deposited.

2. The salt shall be weighed at the time of removal from the factory and shall be transported by the licensee under bond to the Salt Depots at Trivandrum, Quilon, or Alleppey, as the case may be, and stored in the departmental sheds at the Depot.

3. The salt shall be transported in bags of two maunds each.

4. (a) In the case of transport by sea, a shipping bill shall be issued, in respect of each Pattamar or other vessel transporting salt, by the Excise Inspector in charge of the Factory from which the salt is issued, and prior to the landing of salt at the Depot of delivery the shipping bill shall be delivered to the Excise Inspector in charge of the Depot.

(b) In case of transport by land, a pass shall be issued by the Officer in charge of the Factory for each vehicle used for transport.

5. (a) The licensee shall take proper measures to ensure that the salt is not stolen, tampered with, or rendered unfit for human consumption while in transit; and in the case of transport by sea, the licensee shall arrange that the vessel does not touch any other place *en route* before the consignment reaches its destination.

(b) All risks, losses, wastage or deficiency occurring while in transit in respect of the salt issued under bond from the Factory shall be borne by the licensee.

6. The salt so transported shall be weighed and stored in the sheds of the Depot of delivery, such sheds being selected for the purpose by the Assistant Excise Commissioner in charge of the Division, the entire quantity of salt forming one consignment being stored in one and the same shed. Should the weighment disclose any deficiency, the duty on the quantity of such deficiency shall be paid by the licensee. Any excess found on such weighment will be forfeited to Government.

7. If, at the time of landing, it appears that any consignment of salt or any portion thereof has, while in transit, been tampered with, mixed with sand or other extraneous matter, or otherwise spoilt, such salt shall be stored separately and shall, if found unfit for human consumption, be disposed of in such manner as the Excise Commissioner may direct. The duty and cess on the quantity so disposed of shall be paid by the licensee.

8. No concession or allowance for deficiency or wastage shall be allowed on the quantity of salt stored by the licensee in the Deopt sheds and the licensees shall be liable to pay duty at the rate prevailing at the time of issue of salt from the shed and also a cess of half anna per maund on account of supervision charges, rent of storage sheds, etc., on the total quantity of salt covered by the shipping bill or pass transported under bond for storage in the Depot.

9. The transport of salt from the factories shall commence within three months of the date of receipt by the licensees of the certificate of authority granted by the Excise Commissioner and the transport and delivery of the salt at the Depot shall be completed within six months of the date of receipt of the certificate above referred to. If, for any reason, the applicant fails to transport the salt in respect of which such certificate has been issued, the Excise Commissioner may in his discretion declare the earnest money to be forfeited to Government.

10. The sale of salt by the licensee from the sheds shall be permitted only after the duty and the cess due on such salt have been paid by the licensee into the nearest Government Treasury on chellans obtained from the Inspector of the Depot and the Treasury receipt produced before him.

11. The salt shall be weighed and removed from the Depot only in the presence of the Officer in charge of the Depot.

12. The licensee shall arrange for the sale of salt to the public on all days other than Government holidays and shall not refuse to issue salt to any one who is willing to pay the price for the same.

13. The licensee shall be bound to maintain accounts in such form as the Excise Commissioner may prescribe and shall furnish such returns as the Excise Commissioner may require. These accounts should be produced for inspection whenever required by the Officer in charge of the Depot, the Assistant Excise Commissioner in charge of the Division and the Excise Commissioner.

14. All amounts due from the licensee shall be realised from the security amount deposited by him or recovered in the manner prescribed under Section 76 of Regulation III of 1088.

15. In the matter of issue of salt under bond from the factory, the removal, shipment, transport, landing, storage in the sheds and sale, the licensees shall act in conformity with the provisions of the Salt Regulation, III of 1088, and the Rules framed thereunder as well as all orders and directions issued in regard to these matters by the Excise Commissioner or the Assistant Excise Commissioner in charge of the Division.—

*T. G. G., dated 7-8-1928, Pt. I, Pp. 871-872.*

[ *See* Vol. III, Page 505. ]

---

( *Excise Commissioner's Notification dated 3rd January 1929.* )

Under Section 5 of the Salt Regulation, III of 1088, and Rule 145 of the Salt Rules, dated 28th November 1919, it is hereby notified with the sanction of Government conveyed in their Proceedings No. R. Dis. 1886/28 Devpt., dated 11th October 1928 that the Excise Commissioner, delegates to the Assistant Excise Commissioner, Salt Factory Division, the powers conferred on him by the said Regulation and Rules as stated below :—

1. Power to arrange for the construction and maintenance of the works mentioned in Section 29 of Regulation III of 1088, carried out to his satisfaction.

2. Power to order the sale or destruction of salt stored for more than five years and recover the cost from the licensee under Rule 6 (19) of the Salt Rules.

3. Power to prescribe the dates for the commencement and closure of the manufacture of salt in each factory under Rule 22.

4. Power to prescribe the time for the removal of salt to the drying grounds under Rule 26.

5. Power to fix the drying ground to which salt from each pan shall be removed, the platform on which it shall be stored and the route by which salt shall be removed from pans to the drying grounds or from the drying grounds to the place of storage, as the case may be, under Rule 27.

6. Power to set apart in every factory suitable places to serve as drying grounds and storage platforms under Rule 29.

7. Power to order storage of salt on holidays, if necessary, under Rule 38.

8. Power to issue instructions under Rule 43, from time to time, to the licensees in regard to the matters relating to storage not provided for in the Rules.

9. Power to fix the time for the removal of salt under Rule 64.—
*T. G. G., dated 22-1-1929, Pt. IV, Excise Dept.*

[ *See* Vol. III, Pp. 482 and 549. ]

---

## REGULATION V OF 1088 (*Sea Customs*).

---

### GOVERNMENT NOTIFICATIONS.

(1)

*(R. Dis. No. 2097/28/ Devpt., dated 7th December 1928.)*

In exercise of the powers conferred by Section 13 of the Sea Customs Regulation, V of 1088, the Government are pleased to declare the Alleppey Customs Port to be a warehousing port for the purposes of the Sea Customs Regulation.— *T. G. G., dated 11-12-1928, Pt. I, P. 211.*

(2)

*(R. Dis. No. 44/29/Devpt., dated 9th January 1929.)*

In exercise of the powers conferred by Section 20, Sub-section (1), of the Travancore Sea Customs Regulation of 1088 (V of 1088), the Government of Her Highness the Maha Rani Regent hereby order that in respect of tea exported by sea from any customs port to any port beyond the limits of British India or to Aden, a customs duty (by the name of tea cess) at the rate of six annas per hundred pounds shall, as heretofore, be levied, for a period of five years from the 1st April 1928, over and above any other customs duty leviable from time to time on tea.— *T G. G., dated 15-1-1929, Pt. I, P. 280.*

(3)

*(R. Dis. No. 517/29/ Devpt., dated 20th March 1929.)*

In exercise of the powers conferred by Section 23 (*a*) of the Sea Customs Regulation, V of 1088, and in supersession of Notification R. Dis. No.

2029/27/ Devpt., dated the 29th September 1927, exempting from the levy of duty articles of mess property imported by a regiment or battery of the Indian Army on the occasion of its return to India after a tour of Colonial Service, the Government are pleased to exempt from the import duty leviable thereon under the Import Tariff, such articles imported by or along with a unit of the Army in India on the occasion of its return to India after a tour of service abroad as are proved to the satisfaction of the Customs Inspector to have been exported by or along with such unit on the occasion of its departure from India on such tour.— *T. G. G., dated 2-4-1929, Pt. I, P. 502.*

[*See* Vol. III, P. 648]

---

(4)

*(R. Dis. No. 1617/28/ Devpt., dated 11th September 1928.)*

In exercise of the powers conferred by Sections 20 and 22 of the Sea Customs Regulation, V of 1088, and Sections 10 and 11 of the Land Customs Regulation, II of 1091, it is hereby notified under sanction of Her Highness the Maha Rani Regent that the following amendment will be made to the Export Tariff Schedule annexed to the Customs Notification No. R. O. C. 16/28/Devpt., dated the 6th February 1928 :—

In serial No. 3 under the heading "Produce of the Palmyra Tree" below " (1) jaggery" insert the following :—

| | | | |
|---|---|---|---|
| " (2) Jaggery runnings | cwt. | Bh. Rs. 5-0-0 | 2 1/2 per cent. |
| (3) Jaggery molasses | do. | do. | do. |

Under the same heading re-number "Palmyra fibre, raw" as item No. (4).

In serial No. 9 under the heading " sugar cane produce " read " cane-sugar, unrefined " for " molasses."

The amendment will come into effect from the 1st Kanni 1104.

*T. G. G., dated 18-9-1928, Pt, I, P. 60.*

---

(5)

*(R. Dis. No. 299/29/Devpt., dated 9th February 1929.)*

In exercise of the power conferred by Section 128 of the Sea Customs Regulation, V of 1088, the Government of Her Highness the Maha Rani Regent are pleased to prohibit the transhipment at any Port in Travancore of any of the goods specified in the attached schedule :

Provided that the Customs Inspector may permit the transhipment of any such goods, with the exception of "prepared Opium", if (*a*) the country from which the goods have been shipped and the country to which the goods are consigned are signatories to the Geneva Dangerous Drugs Convention, 1925, and have ratified the convention, and (*b*) the goods are covered by an export authorisation or a diversion certificate granted in accordance with Article 13 or Article 15 as the case may be, of the said Convention by or under the authority of the Government of the country from which they have been shipped and such authorisation or certificate is produced for the inspection of the Customs Inspector in accordance with Article 15 of the said Convention:

Provided further that the Government may, by a separate order in each case, permit the transhipment of goods of any of the descriptions specified in the Schedule, with the exception of "prepared opium," when the goods have been shipped from or consigned to a country which has not signed and ratified the said Convention.

*Schedule.*

1. Raw Opium.
2. Prepared Opium.
3. Coca leaves.
4. Medicinal Opium.
5. Crude cocaine and ecgonine.
6. Morphine, diacetyl morphine, cocaine and their respective salts.
7. All preparations officinal and non-officinal (including the so-called anti-opium remedies) containing more than 0·2 per cent. of morphine or more than 0·1 per cent. of cocaine.
8. All preparations containing Diacetylmorphine.
9. Galenical preparations (extract and tincture) of Indian Hemp; and
10. Indian Hemp.

*Explanation*—(1) All the entries in the schedule except "prepared opium" and "Indian hemp" shall be interpreted in accordance with the definitions contained in Article 1 of the Geneva Dangerous Drugs Convention of 1925. The words "National Pharmacopoeia" in that Article shall be interpreted to mean "British Pharmacopoeia."

(2) "Prepared opium" means opium prepared for smoking by any of the operations included in the definition contained in Chapter II of the Hague International Opium Convention of 1912.

(3) "Indian hemp" includes both Indian hemp as defined in the Article quoted in Explanation I and also the preparation of the plant Cannabis Sativa L. commonly known as Bhang.—

*T. G. G., dated 19-2-1929, Pt. I, P. 368.*

[*See* Vol. III, Page 608.]

(6)

*(Excise Commissioner's Notice, dated 12th March 1929.)*

Under Section 14 of the Sea Customs Regulation, V of 1088, the Excise Commissioner, as the Controlling Officer of Customs, hereby declares the Customs godown No. 7 at the Alleppey Port to be a public warehouse, wherein the undermentioned goods only may be deposited, subject to the provisions of Chapter XI of the Regulation, without payment of duty on the first importation thereof:—

Liquors.

(7)

*(Excise Commissioner's Notice, dated 12th March 1929).*

Under Section 96 of the Sea Customs Regulation, V of 1088, the Excise Commissioner, as the Controlling Officer of Customs, hereby declares that the single rate of rent as per schedule appended to Government Notification No. S. R. 1092 dated the 23rd May 1914 will be levied on all liquors deposited in the public warehouse at the Alleppey Port. These rates shall be chargeable from the date of receipt of the liquors in the warehouse to the date of issue, the day of receipt and the day of issue being reckoned as one day. Fraction of a week will be counted as one week.— *T. G. G., dated 19-3-1929, Pt. IV, Excise Dept.*

[*See* Vol. III, Page 644.]

## REGULATION X OF 1089 (*Co-operative Societies.*)

### GOVERNMENT NOTIFICATION.

*(R. Dis. No. 563/29/Devpt., dated 3rd April 1929.)*

Under sanction of Her Highness the Maha Rani Regent, clause 2 of Notification R. Dis. No. 502/28/Devpt., dated the 15th March 1928, regarding the Rules for the guidance of Government servants in their relations with co-operative societies is modified as follows :—

"2. Government servants drawing a pay of Rs. 150 and below are also at liberty to hold any office in any such society or serve on any committee

appointed for the management of its affairs, but they shall not accept remuneration except in accordance with the following provisions.—

(i) The head of the department should be informed without delay of the taking up of such work in every case whether with or without remuneration.

(ii) The appointing authority as well as the head of the department shall have power to require the Government servant to resign his office where they deem it necessary so to direct.

(iii) If in any case the remuneration exceeds Rs. (100) one hundred a year the sanction of Government should be obtained before accepting the remuneration."—

*T. G. G., dated 9-4-1929, Pt. I, P. 518.*

---

## REGULATION XI OF 1089 (*Land Acquisition*).

---

### GOVERNMENT NOTIFICATIONS.

(1)

(*Dis. No. 455/29/Revenue, dated 2nd March 1929.*)

It is hereby notified, with the sanction of Her Highness the Maha Rani Regent, that the following further amendments are made in Part I of the Rules passed under Section 41 of the Land Acquisition Regulation, XI of 1089, under date the 16th December 1914 as amended by Notification dated the 18th September 1926 :—

*Rule 9-A (1).—Add the following as a note under clause (i).*

"NOTE —In the case of rent on wet lands payable in paddy, the value of paddy will be calculated at the *nirak* (market) rate for paddy prevailing at the time of disposal of the Land Acquisition case."

*(2)—Add the following as a note under clause (iii).*

"NOTE.—In the case of *varam* on wet lands payable in paddy, the value of paddy will be calculated at the *nirak* (market) rate for paddy prevailing at the time of disposal of the Land Acquisition case."—

*T. G. G., dated 5-3-1929, Pt. I, P. 434.*

(*See* Vol. III, P. 873.)

(2)

*(Dis. 749/29, dated 1st May 1929.)*

Under sanction of Her Highness the Maha Rani Regent, it is hereby notified that the Rules passed under Section 41 of the Land Acquisition Regulation, XI of 1089, under date the 16th December 1914, are further amended as follows:—

SUBSTITUTE THE FOLLOWING FOR THE EXISTING RULE 20.

"*Rule 20.* If the party does not appear within the time specified and does not apply for a reference to the Court under Section 18 of the Regulation, the Division Peishkar shall, after any further endeavour to secure the party's attendance that may seem desirable, cause the amount due to be paid into Treasury as Revenue Deposits payable to the person or persons to whom it is due, such payment into the Treasury being vouched for in the accompanying Form D. The Division Peishkar shall also give notice of the deposit to the party concerned specifying the Treasury in which the deposit has been made. Such notice shall be served in the manner prescribed in Section 40 of the Regulation. When the payee ultimately claims payment of the sum placed in deposit, the amount will be paid to him in the same manner as ordinary Revenue deposits. The Division Peishkar will as far as possible arrange to make the payment due to the payee from the treasury nearest to the ordinary place of residence of the payees. Whenever payment is claimed through a representative, whether before or after deposit of the amount awarded, such representative must produce authority for receiving the compensation on behalf of his principal.

Provided that in the case of petty amounts not exceeding Rs. (50) fifty in each case the Division Peishkar should issue notice to the payee informing him that if he does not appear before a certain date, to be specified in the notice, the amount due will be remitted to him by Anchal money order, the amount of the money order commission being deducted. In each money order so issued the purpose of remittance should be briefly stated in the acknowledgment portion of the money order form.

Provided further that no compensation awarded jointly to two or more persons on account of land which is owned jointly by them will be remitted by money order.

## Form D.

Name of work for which land has been acquired........................................

To the Officer in charge of......Treasury.

Please receive for transfer to credit of Revenue Deposits the sum of Rs......on account of compensation for land taken up for the above purpose, payable as detailed below :—

| Serial No. in award statement No. | Name of persons to whom due. | Area of land. | Amount payable to each. | Remarks. |
|---|---|---|---|---|
| | | Acres. | Rs. Ch. C. | |
| | Total... | | | |

Date 193 .

*Land Acquisition Officer.*

Received the above amount and credited to Revenue Deposits.

*Treasury Officer.*

*Note.*—This form should be used when the amounts of compensation due are sent to Treasury in the absence of properietors who have failed to present themselves for payment.

## Form D.

Name of work for which land has been acquired ........................................

To the Officer in charge of...... Treasury.

Please receive for transfer to credit of Revenue Deposits the sum of Rs......on account of compensation for land taken up for the above purpose, payable as detailed below :—

| Serial No. in award statement No. | Name of persons to whom due. | Area of land. | Amount payable to each. | Remarks. |
|---|---|---|---|---|
| | | Acres. | Rs. Ch. C. | |
| | Total .. | | | |

Date 193 .

*Land Acquisition Officer.*

Received the above amount and credited to Revenue Deposits.

*Treasury Officer.*

*Note.*—This form should be used when the amounts of compensation due are sent to Treasury in the absence of proprietors who have failed to present themselves for payment.

*T. G. G., dated 7-5-1929, Pt. I, Pp. 659-660.*

(*See* Vol. III, P. 876.)

## REGULATION IV OF 1090 (*Opium.*)

### GOVERNMENT NOTIFICATIONS.

(1)

(*R. Dis. No. 220/3/27/Devpt., dated 19th February 1927.*)

In exercise of the powers conferred by Sections 6 and 35 of the Opium Regulation, IV of 1090, the Government of Her Highness the Maha

Rani Regent direct that the following be substituted for the list of exempted preparations of morphia, published in Notification No. R. Dis. 2033/23, dated the 10th November 1923, on page 66 of the Excise Sheet of the Travancore Government Gazette dated the 20th November 1923/5th Vrischikom 1099 :—

1. Anodyne Pine Expectorant.
2. Apocodeinae Hydrochloridum.
3. Syrupus Apomorphinae.
4. Linctus Apomorphinae C Codeina.
5. Haustus Apomorphinae Co.
6. Mistura Apomorphinae et. Terebeni.
7. Powells' Balsam of Aniseed.
8. Camphorodyne.
9. Chlorodyne.
10. Apomorphinae Hydrochloridum.
11. Mono-ethyl-morphinae Hydrochloridum-Dionin.
12. Syrup Cocillana Compound.
13. Chamberlain's Colic and Diarrhoea Remedy.

(Provided that they do not contain more than two grains of morphia per fluid ounce.)

---

(2)

*(R. Dis. No. 220/1/27/Devpt., dated 19th February 1927.)*

In exercise of the powers conferred by Sections 6 and 35 of the Opium Regulation, IV of 1090, the Government of Her Highness the Maha Rani Regent direct that the conditions relating to prescriptions in the Morphia Rules laid down in Notification No. R. O. C. 1361/24, dated the 11th December 1925, published on pages 61, 62 and 63 of the Travancore Government Gazette dated the 22nd December 1925/8th Dhanu 1101, shall be amended as follows :—

*Cancel* condition (1) and renumber the remaining conditions (2), (3), (4), (5) and (6) as (1), (2), (3), (4) and (5) respectively.

---

(3)

*(R. Dis. No. 220/2/27/Devpt., dated 19th February 1927.)*

In exercise of the powers conferred by Sections 6 and 35 of the Opium Regulation, IV of 1090, the Government of Her Highness the Maha Rani Regent direct that the following be substituted for the list of exempted preparations of opium, published in Notification No. R. Dis. 2033/23, dated the 10th November 1923, on page 66 of the Excise Sheet of the Travancore Government Gazette dated the 20th November 1923/5th Vrischikom 1099 .—

1. Brompton Consumption and Cough Specific.
2. Mistura Pepsinae Composita C Bismutho.
3. Linctus Opiatus.
4. Lotio Plumbi C Opio.
5. Mistura Scillae Co.
6. Syrupus Camphorae Co.
7. Tinctura Anti-periodica.
8. Pulv. Ipecac Co. or Dover's Powder.
9. Ung. Gallae C Opio.
10. Enteronol or Cholerol.
11. A specific containing opium for cholera, diarrhoea and dysentery prepared by Bell Drug and Chemical Company, London, and labelled as such.
12. Cotarnina.
13. Codeina and its preparations and salts.

*T. G. G., dated 1-3-1927, Pt. I, P. 426.*

(4)

*(R. O. C. No. 3054/27/Devpt., dated 4th December 1927.)*

In exercise of the powers conferred by Sections 6 and 35 of the Opium Regulation, IV of 1090, the Government of Her Highness the Maha Rani Regent direct that the following amendments be made to the Opium Rules (Notification R. Dis. No. 2033/23 dated the 10th November 1923) published on page 66 of the Excise sheet of the Travancore Government Gazette dated the 20th November 1923/5th Vrischikom 1099 as subsequently amended :—

I. In Rules I (13); I (14); III (1) (*a*); V; and XX, for the words "containing not more than one tola of opium" substitute the words "not exceeding three tolas".

II. Insert the following as Rule XII-A :—

"XII-A. Any person may transport opium and intoxicating drugs lawfully in his possession under Rules III and VI."

III. In the proviso to Rule III (1), after the words "licensed chemists" insert the words "or lawfully imported."—

*T. G. G., dated 6-12-1927, Pt. I, P. 197.*

(*See* Vol. III, Pp. 950–952.)

(5)

*(R. D. No. 1886/Devpt., dated 8th October 1928.)*

In exercise of the powers conferred by Section 6 of the Opium Regulation, IV of 1090, it is hereby notified, with the sanction of Her Highness the Maha Rani Regent, that Rules VI and XXII of the Opium Rules dated the 16th August 1922, are amended as follows :—

*Rule VI.* —Delete the words "with the sanction of Government" occurring in line 2.

*Rule XXII.*—Delete the last sentence of paragraph 2 and substitute the following therefor:—"The sales shall be subject to confirmation by the Excise Commissioner."

*T. G. G., dated 16-10-1928, Pt. I, P. 119.*

[*See* Vol, III, Pages 951 & 953.]

(6)

*(R. Dis. No. 1875/1 of '28 Devpt., dated 8th October 1928.)*

In exercise of the powers conferred by Sections 5 and 26 of the Abkari Regulation, IV of 1073, the Government of Her Highness the Maha Rani Regent direct that, in modification of Rule 20 of the Rules appplicable to Opium and Ganja, dated 15th August 1907, licenses for the vend of medicines and medical preparations containing ganja will be issued free. Such licenses will be issued only to *bona fide* medical practitioners, chemists and druggists.

*T. G. G., dated 16-10-1928, Pt. I, P. 120.*

[*See* Vol. III, Page 947.]

(7)

*(R. Dis. No. 1875/2/28/ Devpt., dated 8th October 1928.)*

In exercise of the powers conferred by Rule XXVIII of the Opium Rules dated the 16th August 1922, the Government of Her Highness the Maha Rani Regent direct—

1. that licenses for the sale of medicines and medical preparations containing opium shall be in the annexed form ;

2. that the licenses will be issued on payment of a fee of Rupees five per annum ;

3. that permits for the import of medicines containing opium will be issued on payment of a fee of Rupee one for each such permit ; and

4. that the Excise Commissioner and the Assistant Excise Commissioners shall be competent to issue the licenses and permits referred to in paragraphs 1, 2 and 3 above.

FORM OF LICENSE.

No.

LICENSE ISSUED UNDER SECTION XXII OF THE OPIUM RULES DATED 16TH AUGUST 1922.

Mr.

is hereby authorised to have in his possession and to sell during the year 110... medicines and preparations containing opium on the following conditions:—

1. That he shall not use such preparations for any other than medical purposes.

2. That the license shall be cancelled if it is used to cover trade in opium.— *T. G. G., dated 16-10-1928, Pt. I, P. 120.*

Excise Commissioner's Office,
Trivandrum, 110...

(8)

*(R. Dis. No. 660/29/ Devpt., dated 20th April 1929.)*

In exercise of the powers conferred by Sections 6 and 35 of the Opium Regulation, IV of 1090, the Government of Her Highness the Maha Rani Regent direct that the Travancore Morphia Rules published in Notification No. R. Dis. 1842/22/Devpt., dated 16th August 1922, as modified by subsequent Notifications shall be amended as follows :—

Substitute the following for the existing Rule 34 :—

"34. All preparations of morphia containing not more than 0·2 per cent. of morphine may be transported, imported, exported, possessed and sold without restriction, provided that their import shall be permitted only by means other than that of the Post or Anchal."

*T. G. G., dated 30-4-1929, Pt. I, P. 640.*

[*See* Vol. III, Page 956.]

## REGULATION VIII OF 1090 (*Insolvency*).

The following instructions are issued by the High Court for the guidance of the Courts and Official Receivers in the exercise of their powers under the provisions of the Insolvency Regulation.

*(Dated 9th December 1929.)*

1. The Head Ministerial Officer of the District Courts shall examine whether the requirements of Rule 3 of the Rules dated 4th November 1920 and such other Rules as may be in force on the date of the presentation of the petition, regarding the particulars to be specified in a debtor's application are strictly complied with, and if there be any defect therein, have them cured promptly as laid down in Rule 18 of the Civil Courts Guide.

2. Applications by Official Receivers shall not be taxed except when they are made under a particular provision in the Regulation on motions made by them as parties in other proceedings. Vakalaths executed by them engaging Vakils to conduct cases shall, however, be taxed.

3. The Official Receiver shall remit forthwith all realisations on account of the estates administered by him on chellans from Court. On no account shall he retain with him an amount in excess of the maximum sum allowed to be retained with him.

4. In the applications for chellans, the Official Receiver shall state the amount realised, the amount appropriated towards expenses already incurred on account of the estates concerned, the amount proposed to be retained for emergent purposes in connection therewith and the amount intended to be remitted to the Treasury to the credit of the estate. These details shall also be entered in the ledger maintained by the Official Receiver (Form No. 22).

5. The District Judge shall see that the chellans applied for by the Official Receivers are issued expeditiously and take severe notice of the conduct of the clerks concerned whenever any delay is occasioned by them.

6. When the Court passes an order of adjudication in an insolvency proceeding, a vesting order shall be issued to the Official Receiver within one week from the date of the order of adjudication. In the monthly statements submitted by the District Courts to the High Court a specific statement shall be made as to whether the abovesaid requirement has been satisfied in all the cases in which orders of adjudication have been passed; it shall also set forth the reason for non-compliance with the same in each of the cases where the above said rule is not conformed to.

7. The Courts shall prepare the schedule of creditors within a period not exceeding four months as required by Section 23 (1) of the Regulation and not delegate it to the Official Receivers. A copy of the schedule shall be posted in the court house as required under clause 2 of the Section and objections, if any, presented under Section 25, shall be duly heard and disposed of as expeditiously as possible. The Courts shall state in their monthly returns submitted to the High Court, the number of cases in which the time-limit fixed above has been transgressed and the reasons therefor.

8. As soon as vesting orders are passed the Official Receiver shall within a month take possession of the properties after proper identification and deliver them over to lessees who may be appointed after inviting bidders. The Official Receiver shall not be in direct possession of such properties except with the written sanction of the Court. The Official Receiver shall maintain a Register (Form No. 30) of such leases and report to the Courts from time to time detailed information regarding the same.

9. The Official Receiver shall ordinarily conduct sales of properties in public auction except in cases where permission has been obtained from the Courts in writing for disposing of the same otherwise. Such sales shall not be held on Sundays or other recognised holidays. The notice regarding the sale of properties shall contain a provision reserving the right to adjourn

the same if there is not a sufficient number of bidders or if the highest bid is not adequate. If there are not sufficient bidders, except when creditors with substantial interests are present and agree that the amount of the bid is adequate, the first auction should always be adjourned to secure more bidders and a second auction should also be adjourned if the amount of the bid is less than half the upset price. The fact of such adjournment with the reasons thereof shall be specifically recorded in the auction list and the date of adjournment duly notified. If the adjournment is for more than a week, a fresh proclamation shall invariably be issued.

10. The Official Receiver shall not under any circumstance bid at sales or acquire directly or indirectly any interest in the properties sold in auction.

11. The Official Receiver shall endeavour to recover book debts or debts under promissory notes, bonds or other instruments by legal proceedings instituted with the previous auction of the Courts. The sale of such debts in public auction shall not be undertaken except under the orders in writing of the Court after being satisfied that legal proceedings are too costly or inadvisable.

12. If any amount in excess of that retained with the Official Receiver on account of a particular estate is required for meeting the expenses and the necessary funds are available in the treasury belonging to the particular estate, such excess amount shall be drawn by cheques from Court in cases where the expenses are considered admissible by the Court.

13. The Official Receiver shall not incur expenses except in respect of issue of notices and the like without sanction of the Court, and in cases of emergency, meet such expenses and have them ratified by the Courts within a week of incurring the same.

14. The commission claimable by the Official Receiver is leviable only on the amount to be distributed as dividend, the surpluses, if any, out of the realization after discharge of the debts repayable to the debtor not being taken into account for this purpose. The application for commission shall be in Form No. 28.

15. The Official Receiver shall, on no account, be allowed to take commission in respect of secured debts, except in cases where the secured creditor relinquishes his security for the general benefit of the creditors as contemplated by Section 32 of the Regulation, and the properties are sold free of encumbrances. In such cases, the sales should be conducted with the permission of the Court in writing.

16. The Official Receiver is not entitled to claim commission in cases of composition arrangements, since the money paid as the result of such arrangements, is not money realized by the Official Receiver.

17. Questions of apportionment of the commission in case of change of Official Receiver shall be decided by the Court subject to an appeal to the High Court.

18. When orders relating to commission are passed, the Court shall examine whether any portion of the commission is liable to be credited to Government under Rule 4 of the Rules dated 14th August 1922, as revised, and if so, pass the necessary orders for crediting the same to Government and issue cheques to the Official Receiver only in respect of the balance.

19. If more than one application is made during any month for commission, the amount liable to be credited to Government shall be determined in respect of each application and cheques issued in each case after making the calculation as indicated above.

20. A Register in Form No. 31 shall be maintained in the Court for the purpose of verification of the amount of commission.

21. The Official Receiver shall devote a page in his ledger for showing the details regarding the estates out of the funds of which the sum of Rs. 200 allowed to be retained by him is made up.

22. New ledgers need not be opened for every year. The same ledger may be continued from year to year, separate pages being allotted for an index of the estates administered.

23. The Official Receiver shall maintain a cash book (Form No. 27) as provided for under Rule II of the Rules dated 4th November 1920, noting down the opening balance, the total receipts, the total disbursements and the closing balance for each day.

24. The daily balances of the journal should be struck, and verified with those in the cash book every day. The balances of each estate should be struck and entered in the ledger at the close of every year. The pages of the journals, ledgers and cash books to be maintained by the Official Receiver shall be machine numbered.

25. The only item that can be entered on the credit side of the office charge account shall be the amounts leviable towards commission made up of 5 per cent. of the moneys to be distributed as dividends from time to time as laid down in Rule 4 of the Rules dated 14th August 1922 in the case of each estate. The item of debit in this account shall include the amount actually paid to the Official Receiver towards commission and such other amounts as may be directed by the Court to be entered therein. The balance will consist of the amount that has to be credited to Government.

26. In the matter of the administration of the estate, the following instructions will be followed :—

(a) The Receiver shall thoroughly investigate each case and form his own opinion on matters which come to his knowledge and shall not wait to be moved by creditors. If a creditor desires proceedings to be taken which the Receiver regards as doubtful, the latter shall report the matter to the Court which, if it thinks fit, may direct the required action to be taken upon the creditor indemnifying the Receiver against the costs.

(b) When the Receiver is of opinion that a transfer of property or payment by an insolvent may be voidable or fraudulent, he shall report the matter to the Court and obtain directions as to the steps to be taken.

(c) No arrangements shall be agreed upon or compromise effected by the Receiver without the previous sanction of the Court, and such sanction shall be granted only after proper enquiry as provided for in Section 20 (h) of the Regulation.

(d) Every application by a Receiver or interim Receiver to the Court for directions shall be by a written report of the facts connected with the case. If the Court considers that notice has to be issued, it shall direct him to apply by petition in the usual manner.

(e) The Receiver is an officer of the Court and is bound to take the orders of the Court in all matters of doubt or difficulty.

27. The Official Receiver shall meet the initial expenses on account of notices, etc., from the 10 Rs. deposited as provided for elsewhere. For the other expenses, the creditors may be called upon to advance the necessary amounts to meet the expenses, such advance with interest at 6 per cent. per annum being a first charge on the realizations from the estate.

28. The Official Receiver shall submit a monthly statement of account showing all the receipts and disbursements in the cases in which he is the receiver. Such statements shall be forwarded to the Court before the 10th of the succeeding month. The Court shall specify the receipt of this statement in the monthly statements submitted to the High Court by it.

29. If the Courts in the exercise of the powers vested in them under Rule II of the Rules dated 4th November 1920, appoint special auditors to audit the accounts of an estate, they should fix the remuneration for the work

and pay it, from the assets of that estate. If the accounts of the several estates are so audited, the Courts should apportion such remuneration and debit the same to the several estates concerned.

30. The Courts should as far as possible transfer to the Official Receivers all estates to be administered under this Regulation in cases where Receivers other than Official Receivers have been appointed. If this cannot be done, periodical reports of progress of the administration should be obtained and the closing of the proceedings expedited as much as possible. The Courts shall see that the collections made by such receivers are remitted to the Treasury promptly. The Rules of conduct relating to Official Receivers will apply *mutatis mutandis* to other Receivers also.

31. The Official Receivers shall maintain machine-numbered counterfoil receipt books and grant receipts to parties when any money is received from them.

32. The Courts shall see that the penal provisions contained in Section 42 of the Regulation are enforced by them in appropriate cases to ensure a proper and efficient working of the Regulation. They are further required to see that the provisions of clause 2 of Section 14 and of Section 47 of the Regulation are strictly followed in cases falling thereunder.

33. The Courts are directed to maintain B diaries regularly with respect to the proceedings in Insolvency petitions.

34. The Courts will see that the money remitted to the Treasury in connection with any estate is not entered in the general Judicial Register, maintained by them. A separate Register (Form 32) shall be opened allowing not less than a page for each of the Insolvency petitions in which money is realized. A repayment Register (Form No. 33) shall also be maintained.

35. The District Judge shall inspect the Insolvency Registers of his Court and the books and registers maintained by the Official Receiver attached to his Court not less than once in each quarter of each year and forward a report to the High Court embodying the result of such inspection.

---

## Form No. 27.

OFFICIAL RECEIVER'S CASH BOOK.

*(With specimen entries)*

| Date. | Ledger page number. | Receipt Number. | Particulars. | Amount. Cash. | Amount. Treasury. | | Date. | Number. Ledger page | Number. Voucher | Particulars. | Amount. Cash. | Amount. Treasury. | Cheque number. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| | | | Receipts. | Rs. | Rs. | | | | | Charges. | Rs. | Rs. | |
| 1st Kanni 1105. | 25 | ... | Opening balance ... | ... | 500 | | | 25 | 1 | Paid to Superintendent, Government Press, for printing charges ... | ... | 35 | 07895 |
| | ... | ... | Gazette Notification charges from Insol. Petitioner ... | 45 | ... | | | ... | 2 | Commission paid to Official Receiver ... | ... | 75 | 07896 |
| | 75 | ... | Sale-proceeds of house belonging to Raman Nilacantan ... | 800 | ... | | | | 3 | Dividend paid to Kandaswami in I. P. number ... | ... | 90 | 07897 |
| | 93 | ... | Value of movables sold ... | 25 | ... | | | | | Amount remitted into treasury ... | 870 | 200 | ... |
| | | | | ... | 870 | | | | | | 870 | 200 | ... |
| | | | Total...... | 870 | 870 | | | | | Closing balance...... | Nil. | 1,170 | ... |
| | | | O. B...... | ... | 500 | | | | | | | | |
| | | | Total...... | 870 | 1,370 | | | | | Total...... | 870 | 1,370 | ... |

## Form No. 30. *(Lease Register)*.

| No. and year of proceedings. | Name of Insolvent. | Details of the properties. | Name and full address of the lessees. | Date of lease. | Amount of rent. | Date of payment. | Remarks. |
|---|---|---|---|---|---|---|---|

## Form No. 31. (*Commission Register*).

| No. and year of petition. | Amount realised. | Amount available for dividends. | Amount of commission to O. R. | Date when cheque is issued to O. R. | Amount of commission to Government. | Date when credited to Government. |
|---|---|---|---|---|---|---|
| | | | | | | |

## Form No. 32.

REGISTER OF RECEIPTS OF INSOLVENCY DEPOSITS IN I. P. No.........OF.........AT.........TREASURY.

| Date of receipt. | No. of each deposit. | From whom received. | Nature of deposit. | Amount of each deposit. | Initial of Court. | Daily Total. | Details of repayment. | | | | | | | | | | | | | | | | | | | | | | | Total repayments. | | | Lapsed and credited to Government. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | Date. | Amount of each re-payment. | | | Initial of court. | Date. | Amount of each re-payment. | | | Initial of court. | Date | Amount of each re-payment. | | | Initial of court. | Date. | Amount of each re-payment. | | | Initial of court. | | | | |
| | | | | | | | | Rs. | ch. | c. | | | Rs. | ch. | c. | | | Rs. | ch. | c. | | | Rs. | ch. | c. | | Rs. | ch. | c. | |
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

## Form No. 33.

REGISTER OF REPAYMENTS OF INSOLVENCY DEPOSITS IN THE DISTRICT COURT OF..........

| Date of receipt. | Details of original deposits. | | | | | Date of repayment. | Serial No. of repayment. | Name and designation of the payee and his position in the proceedings. | Whether paid in cash or otherwise. | Amount repaid. | | | Signature of payee. | Name and signature of witness. | Initials of | | Remarks. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | No. as per register of receipts. | No. and year of the proceeding. | Amount or balance of deposit. | | | | | | | | | | | | Head ministerial Officer. | Court. | |
| | | | Rs. | ch. | c. | | | | | Rs. | ch. | c. | | | | | |
| | | | | | | | | | | | | | | | | | |

*T. G. G., dated 17-12-1929, Pt. IV, Judl. Dept., Pp. 73—77.*

## REGULATION IX OF 1090 (*Succession Certificate.*)

### GOVERNMENT NOTIFICATIONS.

(1)

*(No. J. 589, dated 30th January 1917.)*

Under sanction of His Highness the Maha Raja, it is hereby notified that, under Section 21 (1) of Regulation IX of 1090, all the First, Second and Third Grade Munsiffs in the State are invested with the functions of a District Court under the Regulation.—

*T. G. G., dated 6-2-1917, Pt. I, P. 219.*

(2)

*(No. J. 8764, dated 31st August 1918.)*

In continuation of Notification No. J. 589, dated the 30th January 1917, it is hereby notified, under sanction of His Highness the Maha Raja, that all the Fourth Grade Munsiffs also in the State are invested with the functions of a District Court under Section 21 (1) of Regulation IX of 1090.—

*T. G. G., dated 3-9-1918, Pt. I, P. 966.*

[*See* Vol. III, Page 1066.]

## REGULATION II OF 1091 (*Land Customs*).

### GOVERNMENT NOTIFICATIONS.

(1)

*(R. O. C. No. 4080/27/ Devpt., dated 27th August 1927.)*

In continuation of Notification R. O. C. No. 3973/26/ Devpt., dated the 20th August 1926, it is hereby notified that the export duty on all kinds of timber except mango and jack wood planks is held in abeyance for a further period of three years from the 1st Chingom 1103 M. E.—

*T. G. G., dated 30-8-1927, Pt. I, P. 15.*

(2)

*(R. Dis. No. 1883/27/ Devpt., dated 29th August 1927.)*

It is hereby notified, under sanction of Her Highness the Maha Rani Regent of Travancore, that the entries in columns 5, 6 and 7 against item

No. 2 in serial No. 7 of the schedule annexed to Government Notification R. Dis. No. 2186/22/Devpt., dated 15th October 1922, fixing the local areas of Excise Ranges and their Head quarters are modified as follows :—

In serial No. 7 add "3. Thodupuzha" as a new item in column No. 5 and substitute the following as the local areas of Ranges and Head quarters of Ranges in columns 6 and 7 instead of the present entries therein against item No. "2. Muvattupuzha".

| *Names of Ranges comprised in the Division.* | *Local areas of Ranges.* | *Head quarters of Ranges.* |
|---|---|---|
| 5 | 6 | 7 |
| 2. Muvattupuzha | The Pakuthies of<br>1. Muvattupuzha<br>2. Arakkulam<br>3. Eranalloor<br>4. Varapatti<br>5. Iramalloor<br>6. Mulavoor<br>7. Kothamangalom<br>8. Kuttamangalom | Muvattupuzha. |
| 3. Thodupuzha | All Pakuthies of the Thodupuzha Taluk. | Thodupuzha. |

*T. G. G., dated 6-9-1927, Pt. I, P. 27.*

[*See* Vol. III, P. 1310.]

(3)

*(D. Dis. No. 179/28/ Devpt., dated 25th January 1928.)*

It is hereby notified that item No. 9 of the schedule annexed to Government Notification No. R. Dis. 2186/22/ Devpt., dated 15th October 1922, fixing the local areas of the several Excise Divisions and Ranges and their head quarters is modified as follows.—

Substitute "Perumbavur" for "Vallom" in line 1 of column 7 against item No. 9.— *T. G. G., dated 31-1-1928, Pt. I, P. 357.*

[*See* Vol. III, Page 1311.]

(4)

*( R. Dis. No. 1033 of 28/Devpt., dated 2nd June 1928. )*

In supersession of Government Notification R. O. C. No. 2315/23/ Devpt., dated 2nd April 1927, it is hereby notified, under sanction of Her Highness the Maha Rani Regent of Travancore, that item No. 2 of the schedule annexed to Government Notification No. R. Dis. 2186/22/Devpt.,

dated 15th October 1922, fixing the local areas of the several Excise Divisions and Ranges and their Headquarters is modified as follows :—

Substitute "Eraniel" for "Thackalai", in line 2 of column 7 against item No. 2.— *T. G. G., dated 5-6-1928, Pt. I, P. 694.*

(5)

*(R. Dis. No. 1777/28/ Devpt., dated 24th September 1928.)*

It is hereby notified under sanction of Her Highness the Maha Rani Regent that item No. 8 of the schedule annexed to Government Notification No. R. Dis. 2186/22/Devpt., dated 15th October 1922 and modified as per Notification dated 25th October 1924 fixing the local areas of the Excise Divisions and Ranges is further modified as follows in so far as it relates to the Shertala and Veluthully Ranges.

| *Excise Ranges.* | *Pakuthis comprising the Ranges.* |
|---|---|
| I. Shertala. | 1. Shertala north. |
| | 2. Vayalar east. |
| | 3. Vayalar west. |
| | 4. Mararikulam north. |
| | 5. Shertala south. |
| | 6. Thannirmukkom north. |
| | 7. Thannirmukkom south. |
| | 8. Kokkothamangalam. |
| | 9. Pallippuram. |
| | 10. Thykattuseri. |
| II. Veluthully. | 1. Panavalli. |
| | 2. Vaduthalamattathubagom. |
| | 3. Thuravoor north. |
| | 4. Thuravoor south. |
| | 5. Arur. |

This Notification will have effect from 1st Chingom 1104.—

*T. G. G., dated 2-10-1928, Pt. I, P. 87.*

[ *See* Vol. III, Page 1311 ]

(6)

*(R. Dis. No. 1722/29/ Devpt., dated 11th November 1929.)*

Consequent on the bifurcation of the Vaikom Range, it is hereby notified, under sanction of Her Highness the Maha Rani Regent, that item No. 8 of the schedule annexed to Government Notification No. R. Dis. 2186/22/Devpt., dated 15th October 1922, fixing the local areas of the Excise Divisions and Ranges, and modified under Notification dated 25th October 1924, is further modified as follows with effect from 1-4-1105 :—

| *Excise Ranges.* | *Pakuthis comprising the Ranges.* |
|---|---|
| Vaikom. | 1. Vetchoor.<br>2. Thalayazham.<br>3. Vaikom.<br>4. Naduvilemuri.<br>5. Vadakemuri.<br>6. Padinjarekara.<br>7. Kulasekaramangalam.<br>8. Chembu.<br>9. Manakunnam of Vaikom Taluk, excepting portions included in the Vadayar Patrol Range. |
| Vadayar Patrol Range. | The area comprised within the following limits :—<br>*North.* The frontier line commencing from Pulimukom to Keecheri and from there to Poothotta.<br>*East.* The outlying portions of the Vaikom Taluk included in the jurisdiction of the Kottayam and Piravom Divisions.<br>*South.* Thalayazham and Kaduthuruthi Pakuthies.<br>*West.* Waterway from Poothotta to Murinjapuzha, running east of Kattikunnu, thence along rivers and canals to Panjipadom, Moozhikal Myladithuruthu up to Mundar. |

*T. G. G., dated 19-11-1929, Pt. I, P. 196.*

[*See* Vol. III, Page 1311.]

(7)

(*Excise Commissioner's Notice, dated 6th January 1928.*)

Under Section 15 of the Land Customs Regulation, II of 1091, it is hereby notified that the manifests intended for the Customs house mentioned in column 2 of the accompanying schedule shall be registered at the place described in column 3 thereof.

| Taluk. | Customs house. | Manifest registering station. | Explanatory remarks. |
|---|---|---|---|
| Muvattupuzha | Vettikal | Pampra | For goods from Pampra and places east of it. |

*T. G. G., dated 17-1-1928, Pt. IV, Excise Dept.*

(8)

(*R. Dis. No. 1881/ 28/Devpt., dated 8th October 1928.*)

It is hereby notified, under sanction of Her Highness the Maha Rani Regent, that the Edapally Customs house will be shifted from its present

place to the building on the Palarivattom Frontier in the Edapally Theckumbhagom Pakuthi of the Parur Taluk hitherto used as an Excise Preventive Station, with effect from the 1st Thulam 1104.

The Customs house will be known as the "Edapally Customs House" as heretofore.— *T. G. G., dated 16-10-1928, Pt. I, P. 120.*

[ *See* Vol. III, Page 1165. ]

(9)

*( Excise Commissioner's Notice, dated 19th October 1928. )*

With reference to item No. 12 of this office notice dated 17th March 1916/4th Meenom 1091 and in continuation of this office notice dated 8th August 1927, it is hereby notified under Section 15 of the Land Customs Regulation II of 1091, that manifests intended for the Customs house mentioned in column 3 of the accompanying schedule shall also be registered in the place described against the Customs house in column 4 thereof.

| No. | Taluk. | Customs house. | Manifest registering station. | Explanatory remarks. |
|---|---|---|---|---|
| I | Parur | Edappally. | Edappally (The building hitherto used as the Edappally chowkey) | |

*T. G. G., dated 23-10-1928, Pt. IV, Excise Dept., P. 36.*

[ *See* Vol. III, Page 1165. ]

(10)

*( Excise Commissioner's Notice, dated 18-3-1929.)*

Under Section 15 of the Land Customs Regulation, II of 1091, it is hereby notified that manifests intended for the Customs house mentioned in column 3 of the accompanying schedule shall be registered only at the place described against the Customs house in column 4 thereof.

| No. | Taluk. | Customs house. | Manifest registering station. | Explanatory remarks. |
|---|---|---|---|---|
| 1 | Shencottah. | Gundar. | Gundar preventive station. | |

*T. G. G., dated 26-3-1929, Pt. IV, Excise Dept.*

(11)

*(Excise Commissioner's Notice, dated 2nd September 1929.)*

With reference to Item No. 4 of this office notice dated 17th March 1916/4th Meenom 1091, it is hereby notified under Section 15 of the Land Customs Regulation, II of 1091, that manifests intended for the Customs house mentioned in column 3 of the accompanying schedule shall also be registered in the place described against the Customs house in column 4 thereof.

*No. 1.*

*Taluk.*—Sertallai.

*Customs house.*—Mukkom.

*Manifest registering station.*—Mukkom Excise station.

*Explanatory remarks.*—For goods coming in Motor cars and buses from places beyond the Arur Pakuthi.

*T. G. G., dated 10-9-1929, Pt. IV, Excise Dept.*

[*See* Vol. III, P. 1164.]

(12)

*(Excise Commissioner's Notice, dated 16th October 1929.)*

Under Section 15 of the Land Customs Regulation, II of 1091, it is hereby notified that the manifests intended for the Customs house mentioned in column 2 of the accompanying schedule shall be registered at the places described in column 3 thereof.

| *Taluk.* | *Customs house.* | *Manifest registering stations.* |
|---|---|---|
| Parur. | Kuriappally. | 1. Madaplathuruthu. |
| | | 2. Moothakunnom. |

*T. G. G., dated 22-10-1929, Pt. IV, Excise Dept., P. 38.*

(13)

*(Dated 26th December 1927.)*

Under sanction of Her Highness the Maha Rani Regent, it is hereby notified for general information that a Customs house for the levy of customs duty will be opened at Kilikollur on the Trivandrum—Tinnevelly Railway with effect from the 1st January 1928/17th Dhanu 1103.—

*T. G. G., dated 3-1-1928, Pt. I, P. 284.*

(14)

*(R. Dis. No. 1519/29/Devpt., dated 8th October 1929.)*

Under sanction of Her Highness the Maha Rani Regent, it is hereby notified for general information that a Customs house for the levy of customs duty will be opened at Kuriappally in the Vatakkekara Pakuthi of the Parur Taluk with effect from the 1st Thulam 1105/17th October 1929.—

*T. G. G., dated 15-10-1929, Pt. I, P. 109.*

## REGULATION IV OF 1091 (*Land Conservancy*).

### GOVERNMENT NOTIFICATIONS.

(1)

*(Dis. No. 494/28/Rev., dated 10th April 1928.)*

Under sanction of Her Highness the Maha Rani Regent, it is hereby notified that the Rules passed under Section 11 of the Land Conservancy Regulation, IV of 1091, under date the 6th August 1921 and published at pages 769 to 771 of the Land Revenue Department sheet of the Gazette dated the 9th August 1921, are further amended as follows:—

*Rule* 9. (1) Substitute the following for the second and third sentences of the Rule:—

"If the land occupied is assessed land or unassessed land other than poramboke, an extract of the report in Form A should be made and treated as a puduval application and the case transferred to the Puduval Register and action taken for registry of the land under the Puduval Rules. If the land occupied is poramboke, the Tahsildar should submit a recommendation in Form D to the Peishkar of the Division for the transfer of the land to the head of assessed waste and on receipt of sanction to the recommendation he shall enter the case in the Puduval Register and deal with the land under the Puduval Rules."— *T. G. G., dated 17-4-1928, Pt. I, P. 581,*

[*See* Vol. III, P. 1198]

(2)

*(Dis. No. 685/29/Rev., dated 13th April 1929.)*

Under sanction of Her Highness the Maha Rani Regent, it is hereby notified that the Rules under Section 11 of the Land Conservancy Regulation, IV of 1091, issued under date the 6th August 1921 / 22nd Karkatakom 1096 and published at pages 769 to 771, Land Revenue Department sheet of the Gazette dated the 9th August 1921, are further amended as follows:—

1. INSERT THE FOLLOWING AS RULE 17 OF THE RULES:—

"Applications to the Dewan for revision of orders and decisions of the Division Peishkars should be presented within 60 days from the date of the order or decision sought to be revised. Applications preferred after the expiry of that period will be rejected unless sufficient cause is shown for not presenting the same within that period. In computing the period of limitation, the day on which the decision or order sought to be revised was pronounced and the time taken for obtaining a copy of the order or decision shall be excluded."

2. Re-number the existing Rule 17 as Rule 18.—

*T. G. G., dated 16-4-1929, Pt. I, P. 576.*

[*See* Vol. III, P. 1200.]

## REGULATION I OF 1092 (*Companies*).

### GOVERNMENT NOTIFICATION.

*(R. Dis. No. 489/29/Judl., dated 16th February 1929.)*

Under proviso to Section 278 (3) of the Travancore Companies Regulation, I of 1092, the London Missionary Society Corporation is exempted from filing annual balance sheets on condition that if and when the corporation does file a balance sheet with the Registrar in England, a copy of such balance sheet shall be filed with the Registrar in Travancore also.—

*T. G. G., dated 19-2-1929, Pt. I, P. 395.*

[*See* Vol. IV, P. 133.]

## REGULATION III OF 1094 (*Chitties*).

### GOVERNMENT NOTIFICATION.

*(R. Dis. No. 2645/29/Judl., dated 7th November 1929.)*

Referring to Government Notification No. J. 2184, dated the 8th March 1919, published at Page 380 of Part I of the Gazette, dated the 18th March 1919, *re* Rules under Sections 17, 37, 40, 41 and 43 of the Chitties Regulation, III of 1094, it is hereby notified for general information that the State Aided Bank of Travancore Ltd., Alleppey, is, until further orders, included among the approved Banks under Section 17 of the Regulation.—

*T. G. G., dated 12-11-1929, Pt. I, P. 174.*

[*See* Vol. IV, P. 517.]

## REGULATION VI OF 1094 (*Motor Vehicles*).

### GOVERNMENT NOTIFICATIONS.

(1)

(*R. Dis. No. 70/29/Judl., dated 21st January 1929*).

Under the sanction of Her Highness the Maha Rani Regent, it is hereby notified for general information that in exercise of the powers conferred under Section 12 of the Travancore Motor Vehicles Regulation, VI of 1094, the following further amendments are made in the Motor Vehicles Rules of 1096, published at Part I of the Gazette dated the 1st April 1924, as modified by the subsequent Government Notifications R. Dis. 2235/26/Judicial, dated 10th August 1926 and R. Dis. 2080/28/Judicial, dated 18th August 1928, published in the Gazettes dated 17th August 1926 and 21st August 1928, respectively :—

1. Substitute the following for clause (*c*) of Sub-rule (3) of Rule 1 :—

"Registering authority", "licensing authority" and "prescribed authority" mean the Commissioner of Police, Travancore.

2. Re-number Rule 23 (*a*) and (*b*) as 23 (1) (*a*) and (*b*) and in clause (*a*) of the Sub-rules as so renumbered, add the words "and the Rules passed thereunder" between the words "Regulation" and "as".

3. Add also the following new provisions and insert them as Sub-rules (2), (3), (4) and (5) to Rule 23 :—

(2) Under Section 19 (2) of the Regulation, the prescribed authority may cancel or suspend for such period as it thinks fit any license granted or renewed under these Rules. No such order shall be passed without giving the licensee a reasonable opportunity for showing cause against it.

(3) On any such order being passed, the prescribed authority shall report the fact to Our Government stating the circumstances that led to the passing of the order and forwarding the records connected therewith.

(4) It shall be competent to Our Government to revise any order passed by the prescribed authority under Sub-rule (2) and cancel or modify it, on the representation of any aggrieved party or otherwise.

(5) The prescribed authority shall cause the particulars of every order of cancellation or suspension whether passed by such authority or the Government to be endorsed in the license affected by such order.—

*T. G. G., dated 29-1-1929, Pt. I, Pp. 295-296.*

[*See* Vol. IV, Pages 536 and 542.]

(2)

(*R. Dis. 485/29/Judl., dated 16th February 1929.*)

Under sanction of Her Highness the Maha Rani Regent, it is hereby notified, that the following is added as Rule 19-A to the Travancore Motor Vehicles Rules of 1096, published in the Government Gazette dated 1st April 1924:—

"Rule 19-A. No person shall drive a motor vehicle when he is intoxicated."— *T. G. G., dated 19-2-1929, Pt. I, P. 389.*

[*See* Vol. IV, Page 542.]

(3)

(*R. Dis. No. 1700/29/Judl., dated 5th July 1929.*)

It is hereby notified that Clauses (*b*) and (*e*) of the Notification under the Travancore Motor Vehicles Regulation, R. Dis. No. 407/26/Judl., dated the 13th February 1926, published in Part IV of the Government Gazette dated the 16th February 1926, are modified as follows:—

"(*b*) No Motor Vehicle shall be driven in any public place within the limits of a Police Town at a speed exceeding ten miles per hour.

(*e*) No Motor Vehicle of which the total weight exceeds 2 3/4 tons or with seating capacity for more than 24 persons or not fitted with pneumatic tyres, shall be driven (1) in any public place at a speed exceeding 12 miles per hour, (2) within the limits of a Police Town at a speed exceeding 8 miles per hour, and (3) in the neighbourhood of a school or market at a speed exceeding 6 miles per hour."— *T. G. G., dated 9-7-1929, Pt. I, P. 819.*

[*See* Vol. IV, Page 563.]

## REGULATION IX OF 1094 (*Land Improvement and Agricultural Loans*).

### GOVERNMENT NOTIFICATION.

(*R. Dis. No. 805/29/ Rev., dated 13th May 1929.*)

Under sanction of Her Highness the Maha Rani Regent, it is hereby notified that the following amendments are made to Form 7 appended to the Land Improvement and Agricultural Loans Rules passed under date the 30th April 1921, corresponding to the 18th Medam 1096:—

*Form No. 7.—Order granting a loan under the Land Improvement and Agricultural Loans Regulation, IX of 1094.*

(1) *Paragraph 1.* Insert the following after the words "for the benefit of" in this paragraph—

"the land mentioned and described in the Schedule hereunder written."

(2) Paragraph 1.—Delete the following foot note.

"Here describe the land to be benefited."

(3) Add the following at the end of the Form—

*The Schedule referred to in Paragraph 1.*

*The land for the benefit of which this loan is granted.*

| Taluk. | Pakuthi. | Survey number, Sub-division No. or letter. | Wet or dry. | Extent. | | Boundaries. | Trees etc. | Remarks. |
|---|---|---|---|---|---|---|---|---|
| | | | | A. | C. | | | |
| | | | | | | | | |

*T. G. G., dated 21-7-1929, Pt. I, P. 698.*

[*See* Vol. IV, P. 598].

## REGULATION X OF 1094 (*Survey aud Boundaries*).

### GOVERNMENT NOTIFICATIONS.

(1)

*(Dis. No. 1607/29/ P. W., dated 16th November 1929.)*

It is hereby notified, with the sanction of Her Highness the Maha Rani Regent, that the Rules for pointing out the boundaries of registered holdings already demarcated and surveyed on the applications of registered-holders, dated the 19th April 1927, and issued under Section 32 (*g*) of the Travancore Survey and Boundaries Regulation, X of 1094, are further amended as follows :—

*Rule 8.—Substitute the following for the existing Rule*:—"8. The fee deposited shall be remitted into the Treasury under the head "I B (3)—Other items." It shall not be refunded to the applicant unless the Tahsildar finds that the work could not be done, owing to the original survey record being incomplete or discrepant or to other cause. In such cases the Tahsildar shall report the matter to the Dewan Peishkar or the Commissioner, Devicolam, as the case may be, and get his sanction for the refund."—

*T. G. G., dated 19-11-1929, Pt. I, P. 209.*

[*See* Vol. IV, Page 637.]

(2)

*(Dis. No. 511/29/ Rev., dated 14th March 1929.)*

It is hereby notified, with the sanction of Her Highness the Maha Rani Regent, that the Rules passed under Section 32, clause (*g*), of the Travancore Survey and Boundaries Regulation, X of 1094, regarding the procedure to be adopted in the case of applications from private parties for pointing out the boundaries of their registered holdings already demarcated and surveyed, with a view to ensure the proper maintenance, renewal and repairs of the survey marks required under Section 14 of the Regulation, and dated the 19th April 1927, are amended as follows :—

*Add the following as Rule 15.*

"If, in the course of the above work, discrepancies are found in the original survey measurements, report may be made to the Superintendent of Survey as to the corrections required, if Porambokes adjoin the registered holdings and the corrections affect the Poramboke boundaries. When the corrections affect the measurements of registered lands alone, the Tahsildar, and the Dewan Peishkar of the Division or the Commissioner, Devicolam, on appeal, shall ordinarily decide as to the corrections required. If, however, the assistance of the officers of the Survey Department is found to be unavoidably necessary in any difficult case, reference may be made to the Superintendent of Survey for his opinion."—

*T. G. G., dated 19-3-1929, Pt. I, P. 467.*

[*See* Vol. IV, Page 638.]

(3)

*(Dis. No. 1607/29/Rev., dated 16th November 1929.)*

It is hereby notified, with the sanction of Her Highness the Maha Rani Regent, that the Rules for the demarcation and survey of sub-divisions of holdings on the application of parties, dated the 10th June 1927, and issued under Section 32 (*g*) of the Travancore Survey and Boundaries Regulation, X of 1094, are further amended as follows :—

*Rule 8.—Substitute the following for the existing Rule* :—"8. The fee deposited shall be remitted into the Treasury under the head "I B (3)—Other items." It shall not be refunded to the applicant unless the Tahsildar finds that the work could not be done, owing to the original survey records being incomplete or discrepant or to other causes. In such cases the Tahsildar shall report the matter to the Dewan Peishkar or the Commissioner, Devicolam, as the case may be, and get his sanction for the refund."—

*T. G. G., dated 19-11-1929, Pt. I, P. 204.*

[*See* Vol. IV, Page 641.]

(4)

*(Dis. No. 511/29/ Rev., dated 14th March 1929.)*

It is hereby notified, with the sanction of Her Highness the Maha Rani Regent, that the Rules passed under Section 32, clause (*g*) of the Travancore Survey and Boundaries Regulation, X of 1094, for the demarcation and survey of sub-divisions of holdings on the applications of parties, and dated the 10th June 1927, are amended as follows :—

*Add the following as Rule 15 and renumber the existing Rules 15 to 17 as 16 to 18.*

"If, in the course of the above work, discrepancies are found in the original survey measurements, report may be made to the Superintendent of Survey as to the corrections required, if Porambokes adjoin the registered holdings and the corrections affect the Poramboke boundaries. When the corrections affect the measurements of registered lands alone, the Tahsildar, and the Dewan Peishkar of the Division or the Commissioner, Devicolam, on appeal shall ordinarily decide as to the corrections required. If however, the assistance of the officers of the Survey Department is found to be unavoidably necessary in any difficult case, reference may be made to the Superintendent of Survey for his opinion."—*T. G. G., dated 19-3-1929, Pt. I, P. 466.*

[*See* Vol. IV, Page 642.]

(5)

*(Dis. No. 1030 of 29/ Rev., dated 18th June 1929).*

It is hereby notified, with the sanction of Her Highness the Maha Rani Regent, that the Land Records Maintenance Rules issued under Sections 14 and 32 of the Travancore Survey and Boundaries Regulation, X of 1094, under date the 31st December 1926, are further amended as follows :—

*Part III-Rule 2.* At the end of clause (*b*) of the Rule add the word "or" and add the following as clause (*c*).

"(c) If the area calculated is less than the area recorded in the Settlement Register, but the width is not less than that recorded in the Divide sketch."

(2) Substitute the following for the last sentence of Rule 2.

"then, in these three cases, the demarcation shall be confirmed according to the existing state of the ground.";—

*T. G. G., dated 25-6-1929, Pt. I, P. 791.*

[*See* Vol. IV, Page 658.]

## REGULATION XII OF 1094 (*Plant Pests and Plant Diseases*).

( *R. Dis. No. 756/29/Devpt., dated 11th May 1929.* )

Under sanction of Her Highness the Maha Rani Regent, it is hereby notified that Rule 11 of the Rules, dated the 27th February 1923, issued under Section 10 of the Travancore Plant Pests and Plant Diseases Regulation, XII of 1094, as amended by Notification R. Dis. No. 2053/25/Devpt., dated the 17th November 1925, is further amended as follows:—

" Unginned cotton, other than cotton from Kathiawar Port which has been produced in India, shall not be imported by sea, and cotton seeds shall not be so imported except after fumigation with carbon bisulphide and at the Port of Alleppey.— *T. G. G., dated 14-5-1929, Pt. I, P. 672.*

[ *See* Vol. IV, P. 724 ].

## REGULATION IV OF 1095 (*Police*).

( *R. O. C. No. 6845/29/Genl., dated 29th November 1929.* )

In exercise of the powers vested in them by Section 50 of the Travancore Police Regulation of 1095, IV of 1095, the Government of Her Highness the Maha Rani Regent are pleased to extend the provisions of Clauses (xii), (xvi), (xvii) and (xviii) of the said Section 50 to the whole of the Taluks of Tovala and Agastiswaram.— *T. G. G., dated 3-12-1929, Pt. I, P. 237.*

## REGULATION V OF 1095 (*Municipal*).

### GOVERNMENT NOTIFICATIONS.

(1)

*(No. L. 1139, dated 5th August 1920.)*

In exercise of the powers conferred by Section 53 of Regulation V of 1095, it is hereby notified, with the sanction of His Highness the Maha Raja, that the properties of the nature hereinafter mentioned are specifically reserved from vesting in the Municipal Councils and they shall, until otherwise notified, continue to vest in the Government of His Highness the Maha Raja and be under their direction, management and control:

1. All gas works and their adjuncts and appurtenances in the Town of Trivandrum and all lamps lit with gas and lamp posts connected therewith in the said Town.

2. All public streets, tanks, reservoirs cisterns, aqueducts, conduits, tunnels, pipes, pumps and other water works and all bridges, buildings, engines, works, materials and things connected therewith or appertaining thereto and also, any adjacent land (not being private properties) appertaining to any public tank or well.

3. All public sewers and drains and all sewers, drains, culverts and water courses in alongside and under any street and all works, materials and things appertaining thereto and

4. All public streets and the pavements, stones and other materials thereof, and also all trees, erections, materials, implements and things provided for such streets.

5. All public canals and backwaters and their banks, as also jetties, landings and other approaches thereto within Municipal limits. (Dis. No. 636/21/L. G.)

---

(2)

*(R. Dis. No. 146/29/Ml., dated 30th March 1929.)*

Under sanction of Her Highness the Maha Rani Regent, Rule 3 of the Rules passed under Section 254 (1) of the Municipal Regulation, V of 1095, for the execution of public works by Municipalities, as amended by Notification D. Dis. No. 196/28/L. G., dated the 14th April 1928, is further amended as follows :—

Add the following sentence as a sub-paragraph to the Rule :—

"The Trivandrum Municipality is permitted to execute, under the supervision of its own P. W. Officer, public works—excepting bridges, culverts and parts of big projects—costing up to Rs. 2,000 for each work. —

*T. G. G., dated 2-4-1929, Pt. I, P. 512.*

(*See* Vol. IV, P. 1058).

---

## REGULATION II OF 1096 (*Prevention of use of Tobacco by Juveniles*).

---

### GOVERNMENT NOTIFICATION.

*(R. O. C. No. 3450/25/Judl., dated 25th June 1929.)*

Under Section 1, Provisos (2) and (3) of Regulation II of 1096, for the prevention of the use of tobacco by juveniles, it is hereby notified that the said Regulation shall be extended to the Municipal Town of Attingal with effect from the 1st Karkatakom 1104.—*T. G. G., dated 2-7-1929, Pt. I, P. 799.*

---

REGULATION VI OF 1096 (*Public Canals and Public Ferries.*)

## GOVERNMENT NOTIFICATIONS.

(1)

(*R. Dis. No. 456/29, P. W., dated 14th February 1929.*)

Under sanction of Her Highness the Maha Rani Regent, the following amendments are made to Rule 74 of the Travancore Public Canals and Public Ferries Rules, 1100 M. E.:—Substitute "and" for "or" occurring between "with" and "on" in line 3, and insert "in Form M appended to these Rules" between "application" and "of" in the same line.

Insert Form M below Form L appended to the Rules.

(2)

(*R. Dis. No. 456/29/P. W., dated 14th February 1929.*)

Under Rule 74 of the Travancore Public Canals and Public Ferries Rules, 1100 M. E. the appended Form with the Rules and conditions subjoined, has been prescribed for the application to be made by the owners or agents of steam vessels plying for hire, for fixing the time of departure from, and the arrival at, a wharf or jetty of such steam vessels.

FORM M (*Vide Rule 74.*)

APPLICATION.

*Under Rule 74 of the Travancore Public Canals and Public Ferries Rules 1100 M. E.*

No. Station

To, Date

The Executive Engineer,

..........................Division.

Sir,

I / We request you to be so good as to accord sanction to me / us to run boat service from...........(date).........between.........(station).........and ............(station)............as per the timings given below :—

*Timings.*

| Starting station. | Intermediate stations. | | | | | | | | | Terminal station. |
|---|---|---|---|---|---|---|---|---|---|---|
| D. | A. | D. | A. | D. | A. | D. | A. | D. | A. | D. | A. |

NOTE :—1. A denotes arrival and D denotes departure.

2. The boats named below are to be used for the service and they have the necessary (A) Form license and (D-1) and (D-2) certificates which are herewith attached for perusal and return.

Name of boats. 2.

3. &c.

3. The name of the Crew to be engaged in the boats are given below and they possess the necessary certificates of competency/service which are herewith forwarded for perusal and return.

Name

Designation.

4. I/We have read the rules and conditions hereinbelow mentioned and agree to abide by them in conducting the boat service. I/We also agree to run regularly one service at each of the timings applied for.

5. I/We enclose application forms in duplicate one to be sanctioned and returned and the other to be retained by the sanctioning authority.

*Rules and Conditions.*

i. This service shall not be conducted except as specified in the time table given above.

ii. If, owing to an increase in the passenger traffic, extra services are found necessary on particular days, sanction will be given by the Canal Officers at their discretion on the application of the owners or their agents, to run special services on those days after the regular services have been run.

iii. The services according to the timings sanctioned shall be run regularly and on failure to do so consecutively for a week, the timings shall be liable to be cancelled unless such failure is caused by unavoidable circumstances which must be satisfactorily explained immediately to the Canal Officer in writing.

iv. The Crew on board a vessel and the staff engaged by the owner or agent of that boat for the regulation of traffic at the wharf and jetties shall behave courteously towards the passengers and the employees of the P. W. D.

v. Boats not starting from a station at the prescribed time and those starting late from intermediate stations are liable to be detained at the discretion of the Canal Officer in charge of the Station until after the time of departure of the last of the competitive boats, if any, following.

vi. Boats arriving at an intermediate station earlier than the scheduled time are liable to be detained until the time fixed for departure.

vii. Boats running on the same line shall not follow one another too closely nor overtake one another in narrow waterways.

viii. Boats shall be allowed at the jetty only for such time as is needed for passengers to embark and disembark at the several stations, as the Jetty Superintendent directs.

ix. The owner or agent of a boat who is for the time being in immediate charge of the boat shall affix his signature to any observations that may be entered in the log book, either by the Jetty Superintendent or the Canal Officer, regarding the number of passengers or time of arrival and departure of the boat or any infringement of the rules under the Public Canals and Public Ferries Regulation. He shall in no case refuse to affix his signature thereto when called on to do so, but if he has reasons to differ from such entries he may note his own explanation therein.

x. A table of fares shall be pasted in a conspicuous place at each and every jetty and also in the boat for the information of the passengers and the Canal Officer and the Jetty Superintendent shall be empowered to insist on the sanctioned rates of fares alone being collected from the passengers.

xi. Admission to lower classes cannot be refused when there is accommodation. Except under Rule 53 of the Public Canals and Public Ferries Regulation, VI of 1096, no passenger shall be refused accommodation in a vessel, provided there is room.

xii. For the infringement of any of the above conditions, the Executive Engineer may exercise the powers vested in him under Section 9 of the Regulation.

xiii. Any vessel navigating a public canal in contravention of any of the provisions of the Public Canals and Public Ferries Regulation or of any rule made thereunder or any conditions of license or registration prescribed therefor shall be stopped by the Canal Officer under the powers vested in him by Section 15 of the Regulation and detained (*a*) until the same is complied with or (*b*) until the penalty imposed by the Executive Engineer under Section 9 of the Regulation in lieu of suspension or cancellation of the license or in lieu of prosecution, has been paid or recovered or (*c*) until the offence, if any, has been enquired into and disposed of.

(Signature of the applicant.)

**Accompaniment**:—
**Certificate.**

(Sanction.)

No.

The timings applied for are sanctioned. The original certificates are herewith returned.

Executive Engineer's Office.
Station.
Date.

*Executive Engineer.*

*T. G. G., dated 19-2-1929, Pt. I, Pp. 393-394.*

[*See* Vol. IV, Page 1132.]

(3)

*(R. Dis. No. 530/29/P. W., dated 22nd February 1929.)*

Under sanction of Her Highness the Maha Rani Regent, the following note is added to Rule 59 of the Public Canals and Public Ferries Rules, 1100 M. E., as Note 2, the existing Note being numbered as Note 1:—

"NOTE 2.—The number of passengers a steam vessel shall be premitted to carry on board for day services during monsoon period (*i. e.* from 1st June to 1st August) and for night services (8 P. M. to 6 A. M.) in all weathers shall be fixed at three-fourths of the number the vessel is permitted to take for day service in fair weather."— *T. G. G., dated 26-2-1929, Pt. I, P. 414.*

[*See* Vol. IV, Page 1127.]

(4)

*(R. Dis. No. 1052/29/P. W., dated 27th April 1929.)*

Under sanction of Her Highness the Maha Rani Regent, the following amendments are made to the Public Canals and Public Ferries Rules, 1100:—

(*a*) Add after "29—Landing at Pannaikadavu" at the end of Rule 2 (*a*), the following:—

"30. Athirampuzha.
31. Thalavady.
32. Pulikeel.
33. Pulinkunnoo.

(*b*) Add after "22—Water route (branch river of the Pamba) from Mannar (Pannaikadavu) to Karumadi" at the end of Rule 2 (*b*), the following:—

23. Alleppey to Pulikeel Canal.
24. Athirampuzha Canal.

*T. G. G., dated 30-4-1929, Pt. I, P. 626.*

[*See* Vol. IV, Pp. 1108—1109.]

(5)

*(R. Dis. No. 1052/29/P. W., dated 27th April 1929.)*

Under sanction of Her Highness the Maha Rani Regent, it is hereby notified that (1) the Alleppey to Pulikeel Canal and (2) the Athirampuzha Canal are both declared Public Canals, and the Wharfs at (1) Athirampuzha, (2) Thalavady, (3) Pulikeel and (4) Pulinkunnu as Public Wharfs, under the Public Canals and Public Ferries Regulation, subject to the Public Canals and Public Ferries Rules, 1100.— *T. G. G., dated 30-4-1929, Pt. I, P. 626.*

(6)

*(R. Dis. No. 1036/29/P. W., dated 29th April 1929.)*

Under sanction of Her Highness the Maha Rani Regent, the following amendment has been made to Rule 6 of the Public Canals and Public Ferries Rules, 1100 :—

Substitute "registered tonnage" for the expression "gross tonnage" occurring in the Rule.— *T. G. G., dated 7-5-1929, Pt. I, P. 666.*

[ *See* Vol. IV, P. 1111. ]

(7)

*(R. Dis. No. 1420/29/P. W., dated 14th June 1929.)*

Under sanction of Her Highness the Maha Rani Regent, the following amendments are made to the Public Canals and Public Ferries Rules, 1100 .—

1. (*a*) From Rule 6, omitting the following words and figures namely :—"or under the Indian Ports Act of 1908", and

(*b*) Re-number the Rule so amended as Rule 6 (*a*).

2. After Rule 6 (*a*) as re-numbered, insert the following as Sub-rule (*b*), namely,:—

"(*b*) The fee for the licensing or registration under these Rules of any vessel licensed or registered in Malabar under the Indian Ports Act, 1908, shall be reduced by the amount of the fee paid for the licensing or registration under the said Act. Provided that the owner of the vessel resides or has his principal place of business in Malabar and the vessel is not intended to, and does not, ply for service exclusively within Travancore limits."— *T. G. G., dated 18-6-1929, Pt. I, P. 769.*

[ *See* Vol. IV, P. 1111.]

(8)

*(R. Dis. No. 1441/29/P. W., dated 17th June 1929.)*

Under sanction of Her Highness the Maha Rani Regent, the following amendments are made to the Public Canals and Public Ferries Rules, 1100:—(1) Add at the end of Rule 108: "The Master, Syrang and driver should, in addition, possess the certificates prescribed by the Rules", and insert below the Rule, the following Exception:—

"*Exception.*—This Rule shall not apply to steam vessels that are registered in Malabar under the provisions of Madras Act II of 1890 or under the Indian Ports Act, 1908."

(2) Insert under Rule 122, the following Rule as Rule 122-A:—

"122-A. Notwithstanding anything contained in Rules 112 to 122, the Port Officer, Cochin, may, after such examination as he deems sufficient, grant certificates of competency to persons proposed to be employed as the Master, Syrang or Engine Driver of steam vessels that are registered in Malabar under the provisions of Madras Act II of 1890 or under the Indian Ports Act, 1908, and are for that reason included in the classes of vessels referred to in Rules 6 *(a)* and 6 *(b)*, and such examination and such certificates shall, in the case of the persons acting as Master, Syrang or Engine Driver of such vessels be deemed to be lawful under the Regulation and Rules. The certificates shall contain such particulars as are sufficient to identify the person certified."— *T. G. G., dated 25-6-1929, Pt I, P. 786.*

[*See* Vol. IV, Pages 1130 & 1142.]

---

(9)

*(R. O. C. No. 4621/29/P. W., dated 13th September 1929.)*

Under sanction of Her Highness the Maha Rani Regent, it is notified that Pattakadavu near Sasthancotta is declared a public wharf under Rule 2 *(a)* of the Public Canals and Public Ferries Rules, 1100, along with the intermediate stations noted below on the line from Quilon to Pattakadavu.

1. Aaravila.
2. Ashtamudi.
3. Kovilvila.
4. Arinalloor.

*T. G. G., dated 17-9-1929, Pt. I, P. 48.*

[*See* Vol. IV, Page 1107.]

---

(10)

*(R. Dis. No. 2450/29/P. W., dated 25th November 1929.)*

Amendment to Rules passed under the Public Canals and Public Ferries Regulation, VI of 1096, passed under Notification R. Dis. No. 2450/29/ P. W., dated the 25th November 1929.

Add after "33. Pulinkunnoo" at the end of Rule 2 (*a*), the following :—
"34. Varapuzha."— *T. G. G., dated 3-12-1929, Pt. I, P. 236.*

(11)

(*R. Dis. No. 2450/29/P. W., dated 25th November 1929.*)

Under sanction of Her Highness the Maha Rani Regent, it is hereby notified, for the information of the public, that Varapuzha, one of the terminal and starting stations on the Ernaculam-Varapuzha line is declared a wharf under Rule 2 (*a*) of the Public Canals and Public Ferries Regulation.

*T. G. G., dated 3-12-1929, Pt. I, P. 237*.

## REGULATION VIII OF 1096 (*Income-Tax*).

### GOVERNMENT NOTIFICATIONS.

(1)

(*D. Dis. No. 459/29/Rev., dated 4th March 1929.*)

Under sanction of Her Highness the Maha Rani Regent, it is hereby notified, under Section 2 (7) of the Travancore Income-Tax Regulation, VIII of 1096, as amended by Regulation V of 1100, that Messrs. Commercial Uuion Assurance Co., Ltd., England, carrying on business in Travancore, are declared a Company for the purpose of the said Regulation.—

*T. G. G., dated 12-3-1929, Pt. I, P. 448.*

[ *See* Vol. III, Page 1339. ]

(2)

( *D. Dis. No. 31/29/Rev., dated 7th January 1929.* )

It is hereby notified under Section 42 (1) of the Income-Tax Regulation, VIII of 1096, as amended by Regulation V of 1100, and with the sanction of Her Highness the Maha Rani Regent, that the commutation rate for the purpose of computing Income-Tax on taxable incomes received in paddy is fixed at 24 chuckrams a Para of 800 cubic inches of paddy for the year 1104 — *T. G. G., dated 8-1-1929, Pt. I, P. 262.*

[ *See* Vol. IV, Page 1338. ]

## REGULATION I OF 1097 (*Electricity*).

### RULES.

*(R. Dis. No. 1774 / 29/ P. W., dated 29th July 1929.)* *

In exercise of the powers conferred by Section 38 of the Travancore Electricity Regulation, 1097 (I of 1097), the Government of Her Highness the Maha Rani Regent are pleased to make the following Rules.

### CHAPTER I.

### Preliminary.

1. These Rules may be called the Travancore Electricity Rules, 1104, and shall come into force at once throughout the whole of Travancore.

Definitions.

2. In these Rules, unless there is anything repugnant in the subject or context—

(*a*) "The Regulation" means the Travancore Electricity Regulation, 1097:

(*b*) "Ampere" means a unit of electric current, and is the unvarying electric current which, when passed through a solution of nitrate of silver in water, in accordance with the specification set out in Annexure 1 to these Rules, deposits silver at the rate of 0·001118 of a gramme per second:

(*c*) "Apparatus" means electrical apparatus, and includes all apparatus, machines, and fittings in which conductors are used, or of which they form a part:

(*d*) "Authorized person" means a person authorized in writing by a licensee, a consumer or an owner, or by the owner, agent or manager of a mine, or by the agent of any company operating in an oil-field or by the owner of a drilled well in an oil-field or by a contractor for the time being under contract with a licensee, a consumer or an owner to carry out duties incidental to the generation, transformation, distribution, or use of energy, such person being competent for the purposes of the Rule in which the term is used:

(*e*) "Bare" means not covered with insulating material:

(*f*) "Circuit" means an electrical circuit forming a system or branch of a system:

(*g*) "Concentric system" means a system in which a conductor, called the inner conductor, is insulated and in which the circuit is completed

* *T. G. G., dated 13-8-1929, Part I.*

through one or more conductors, called the outer conductors, which are insulated from one another and are disposed over the insulation of, and more or less completely round, the inner conductor:

(*h*) "Conductor" means an electrical conductor arranged to be electrically connected to a system:

(*i*) "Covered with insulating material" means adequately covered with insulating material of such quality and thickness that there is no danger:

(*j*) "Cut-out" means any appliance for automatically interrupting the transmission of energy through any conductor when the current rises above a predetermined amount:

(*k*) "Danger" means danger to health or danger to life or limb from shock, burn, or other injury to persons, or from fire or explosion, attendant upon the generation, transformation, distribution, or use of energy:

(*l*) "Dead" means at, or about, earth potential, and disconnected from any live system; provided that apparatus separated from a live conductor by a spark gap shall not be considered dead:

(*m*) "Distributing licensee" means a licensee who obtains from another licensee a supply of energy in bulk for distribution:

(*n*) "Earthed" or "connected with earth" means connected with the general mass of earth in such manner as to ensure at all times an immediate discharge of energy without danger:

(*o*) "Earthing system" means an electrical system in which all the conductors are earthed:

(*p*) "Electric Inspector" means an Inspector appointed under Section 37 (1) of the Regulation:

(*q*) "Electrician" means a person appointed in writing by the lessee or owner, agent or manager of electrical plant or apparatus for the purpose of supervising the same, such person being over twenty-one years of age and competent for the purposes of the Rules in which the term is used:

(*r*) "Inspector of Mines" means an Inspector appointed under the Travancore Mines and Minerals Regulation, 1103:

(*s*) "Live" means electrically charged:

(*t*) "Metallic covering" means iron or steel armouring, with or without a lead or other metallic sheath as the conditions of the case may require, or an iron or steel pipe surrounding one or more conductors:

(*u*) A meter of a type included in the specification herein referred to shall be deemed to be "correct" within the meaning of Section 27 of the

Regulation when its limits of error as certified by an Electric Inspector do not exceed those laid down in the "British Standard Specification for Electricity Meters; No. 37" dated 1919, and when it cannot register at no load; and any meter, maximum demand indicator or other apparatus for which there is for the time being no British Standard Specification shall be deemed to be "correct" within the meaning of Section 27 of the Regulation when its limit of error, as certified by an Electric Inspector, does not exceed 3 per cent. above or below absolute accuracy at all loads in excess of one-tenth of full load and up to full load and when it cannot register at no load:

(*v*) "Ohm" means a unit of electric resistance, and is the resistance offered to an unvarying electric current by a column of mercury at the temperature of melting ice 14·4521 grammes in mass of a constant cross-sectional area and of a length of 106·3 centimetres;

(*w*) "Open sparking" means sparking which owing to the lack of adequate provisions for preventing the ignition of inflammable gas external to the apparatus would ignite such inflammable gas:

(*x*) "Owner" means a person (other than a licensee) generating, supplying, transmitting or using energy to whom any of the provisions of Part III of the Regulation apply:

(*y*) "Pressure" means the difference of electric potential measured in volts between any two conductors or between any part of either conductor and the earth as read by a hot-wire or electrostatic voltmeter, and is said to be—

(i) "low" where, under ordinary working conditions, it does not exceed 250 volts by an amount greater than 5 per cent. of the normal pressure where the energy is used;

(ii) "medium" where, under ordinary working conditions, it may exceed 250 volts, but does not exceed 650 volts by an amount greater than 5 per cent. of the normal pressure where the energy is used;

(iii) "high" where, under ordinary working conditions, it may exceed 650 volts:

(*z*) "Switchgear" means switches, cut-outs or fuses, conductors, and other apparatus in connection therewith, used for the purpose of controlling the current or pressure in any system or part of a system:

(*aa*) "System" means an electrical system in which all the conductors and apparatus are electrically connected to a common source of pressure:

(*bb*) "Use" of energy means the conversion of electrical energy into mechanical or chemical energy, heat, or light for the purpose of providing mechanical energy, electrolysis, heat, or light:

(*cc*) "Volt" means a unit of electro-motive force, and is the electric pressure which, when steadily applied to a conductor whose resistance is one ohm, will produce a current of one ampere: and

(*dd*) "Watt" means a unit of power, and is the energy expended per second by a varying electric current of one ampere under an electric pressure of one volt.

---

## CHAPTER II.

### Electric Inspectors.

**3.** No person shall be appointed an Electric Inspector unless,—

Qualifications of Electric Inspector.

(*a*) he has had at least five years' practical experience in an electrical or mechanical engineering workshop or electric power station ; and

(*b*) after acquiring such experience, he has been regularly engaged for a period of not less than five years in the practice of electrical engineering ;

Provided that the Government may appoint any person not so qualified, if in their opinion such person as otherwise fully qualified to exercise the powers and perform the functions of an Electric Inspector.

Entry and Inspection.

**4.** (1) Any Electric Inspector or any officer appointed to assist an Electric Inspector may enter, inspect and examine any place, carriage or vessel in which he has reason to believe any appliance or apparatus used in the generation, transmission, supply or use of energy to be, and may carry out tests therein.

(2) Every licensee and owner shall afford at all times all reasonable facilities to any such Inspector or officer to make such examinations and tests as may be necessary to satisfy himself as to the due observance of the Regulation, the license (if any) and these Rules.

(3) The licensee shall provide means for carrying out all tests prescribed by or under the Regulation of the appliances or apparatus used for the supply of energy by him.

(4) An Electric Inspector may serve an order, in the form set out in Annexure VII to these Rules, upon any licensee or owner, calling upon him to comply with any specified Rule, and the person so served shall thereupon comply with the order within the period named therein.

Amount of fees.

**5.** The Government may levy such fees for testing and inspection and generally for the services of Electric Inspectors under the Regulation as they may from time to time, by general or special order, direct.

Incidence of fees.

**6.** Where an Electric Inspector is called in to decide any difference or dispute, and where a fee for such service is recoverable, the Electric Inspector shall decide by whom such fee shall be payable.

Submission of records.

**7.** An Electric Inspector may require a licensee and a licensee may require an Electric Inspector to submit to such Inspector or licensee for examination any records of tests made in connexion with the licensee's works by the licensee or the Inspector: and the licensee or Inspector shall comply with such requisition.

List of consumers.

**8.** An Electric Inspector may require a licensee to submit to him a list of all consumers supplied with energy by him at a pressure exceeding low pressure and of the addresses at which such energy is supplied, and the licensee shall comply with such requisition.

---

## CHAPTER III.

## Licences.

### *Applications for Licences.*

Applications for licences.

**9.** Every application for a licence shall be signed by, or on behalf of, the applicant and addressed to such officer as the Government may designate in this behalf and it shall be accompanied by—

(*a*) six copies in print of the draft licence as proposed by the applicant, the name and address of the applicant and of his agent (if any) being printed on the outside of the draft;

(*b*) one copy, signed by the applicant, of a map of the proposed area supply, on a scale

(i) of not less than six inches to a mile, or

(ii) if no such map is available, not less than that of the largest scale ordnance map available, or

(iii) on such scale as may be approved by the Government, so marked or coloured as to define any portion of such area which is under the administration of any local authority;

(c) a list of any local authorities invested with the administration of any portion of the area of supply;

(d) an approximate statement describing any lands which the applicant proposes to acquire for the purpose of the licence under the provisions of the Land Acquisition Regulation, XI of 1089;

(e) an approximate statement of the capital proposed to be expended in connection with the undertaking;

(f) if the applicant is a company registered under the Travancore Companies Regulation, 1092, or having incorporation under law in the United Kingdom or the British Possessions, a copy of the Memorandum and Articles of Association; and

(g) a treasury receipt for a fee of five hundred rupees paid into a Government treasury unless such fee is remitted, wholly or in part, by general or special order of the Government.

Copies of map and draft licence for public inspection.

**10.** The applicant shall deposit at his own office or at that of his agents, and at the office of every local authority invested with the administration of any portion of the proposed area of supply—

(a) a copy of the map referred to in clause (b) of Rule 9 for public inspection; and

(b) a sufficient number of copies of the draft licence to be furnished to all persons applying for them at a price not exceeding one rupee per copy.

**11.** The draft licence shall contain the following particulars, namely:—

Contents of draft licence.

(a) a short title descriptive of the proposed undertaking, together with the address and description of the applicant, or, in the case of a firm, the names of all the individual members of the firm;

(b) a statement of the boundaries of the proposed area of supply;

(c) if the generating station is situated, or to be situated, outside the area of supply or if any intervening area, not included in the area of supply, is to be crossed, a list of the streets along or across which electric supply lines are to be laid down or placed;

(d) the proposed conditions of supply, including maximum prices, nature and amount of supply (if limited) and the like;

(e) a list of streets (if any) not repairable by the Government or by a local authority and of railways and tramways (if any), the soil or pavement of which the applicant seeks powers to open, break up or interfere

with, and the names of the persons by whom such streets are repairable, or who are for the time being entitled to work such railway or tramway;

(*f*) the proposed periods after which the right to purchase is to take effect;

(*g*) a statement of any special terms of purchase or orders proposed to be made under Section 10 of the Regulation; and

(*h*) any proposed modification of the schedule to be made under Clause (*f*) of Sub-section (2) of Section 3 of the Regulation.

Form of draft license.

**12.** The form of draft license set forth in Annexure II to these Rules may, with such variation as the circumstances of each case require, be used for the purposes of Rule 9, and, if used, shall be sufficient.

Advertisement of application and contents thereof.

**13.** (1) The applicant shall, within fourteen days from the submission of the application under Rule 9, publish notice of this application by public advertisement, and such advertisement shall consist of—

(*a*) the draft license, and

(*b*) the address of the offices at which, under Rule 10, copies of the map therein referred to may be inspected and copies of the draft license obtained.

(2) The advertisement shall be headed by a short title corresponding with that at the head of the draft license, and shall state that every local authority, company or person desirous of making any representation with reference to the application to the Government, may do so by letter addressed to such officer as the Government may designate in this behalf, within three months of the date of issue of the newspaper containing the first advertisement.

(3) The advertisement shall be inserted by the applicant in at least three successive issues of the same newspaper published or circulated in the proposed area of supply or in such newspaper as the Government may approve.

(4) The applicant shall send a copy of each of the three successive issues of the newspaper containing the advertisement to such officer as the Government may designate in this behalf as soon as the third issue appears, and the Government shall publish the advertisement once at least in the Government Gazette within one month from the date of the first advertisement published under Sub-rule (3) of Rule 13.

*Objections to Licence.*

Amendment of draft licence.

**14.** Where any person desires to have any amendment made in the draft-licence, he shall deliver a statement of the same to the applicant, and also to such officer as the Government may designate in this behalf within the time allowed under Sub-rule (2) of Rule 13 for the submission of representations referring to the application.

Local enquiries.

**15.** Where any person locally interested objects to the grant of a licence applied for under the Regulation, the Government shall, if either the applicant or the objector so desires, cause a local enquiry to be held, of which due notice shall be given to both applicant and objector :

Provided that the Government may refuse such an enquiry if, in its opinion, the objection is of a trifling or vexatious nature.

*Grant of Licence.*

Grant of licence.

**16.** If and when the Government has approved of a draft licence, either in its original form or in a modified form, such officer as the Government may designate in this behalf shall inform the applicant of such approval and of the form in which it is proposed to grant the licence.

Notification of grant of licence.

**17.** If the applicant is willing to accept the licence in the form proposed by the Government, the Government shall, on receipt of an intimation in writing of such acceptance, publish the license in the Government Gazette, and notify that it has been granted.

Date of commencement of licence.

**18.** The date of a notification under Rule 17 shall be deemed to be the date of commencement of a licence.

Deposit of map.

**19.** When a license has been granted, a map showing, as regards such license, the particulars stated in clause (*b*) of Rule 9 shall be signed, and dated to correspond with the date of the notification of the grant of the licence, by such officer as the Government may designate in this behalf and retained by him as the deposited map.

Deposit of printed copies.

**20.** When a license has been granted, the licensee shall, within thirty days, deposit printed copies of the licence together with copies of the map for public inspection at his own office and at that of his agents (if any) and at the office of every local authority within the area of supply and shall furnish printed copies of the license to all persons applying for the same at a price not exceeding one rupee per copy.

*Orders supplementing or amending licenses.*

21. Where a licensee desires the written consent of the Government under Sub-section (5) of Section 12 of the Regulation to enable him to open or break up the soil or pavement of any street not repairable by the Government or a local authority, or any railway or tramway, application for such consent shall be made in writing to such officer as the Government may designate in this behalf, and shall describe accurately the street, railway or tramway which the applicant seeks power to open or break up, and the names of the persons by whom such street is repairable, or who are for the time being entitled to work such railway or tramway, and the extent to which he proposes to open or break up the same.

Application for written consent of the Government in certain cases.

22. (1) No alterations or amendments in the terms and condtitions of the licence shall be made under clause (*b*) of Sub-section (3) of Section 4 of the Regulation until they have been published by the applicant and by the Government; and the provisions of Sub-rules (2), (3) and (4) of Rule 13 shall apply to such publication.

Amendments of licences.

(2) If any such alteration or amendment as is referred to in sub-Rule (1) of Rule 22 is made, it shall be notified by the Government in the Government Gazette.

CHAPTER IV.

## Conditions of Supply by Licensee.

23. (1) A licensee shall not connect the conductors and fittings on a consumer's premises with his works unless he is reasonably satisfied that the connection will not at the time of making the connection cause a leakage from those conductors and fittings exceeding one five-thousandth part of the maximum supply demanded on the consumer's premises.

Precautions against leakage before connection.

(2) Where a licensee declines to make a connection, in accordance with sub-Rule (1) he shall serve upon the consumer a notice stating his reason for so declining.

24. (1) If at any time a licensee has reasons to believe that a leakage, likely to affect injuriously the use of energy by the licensee or by other persons, exists in the premises of a consumer, then the licensee may give the consumer reasonable notice in writing, that he desires to inspect and test such wires and fittings belonging to the consumer as form part of the circuit,

Leakage on consumer's premises.

(2) If the consumer does not give all reasonable facilities for inspection and testing, or if a leakage from the consumer's conductors exceeding one five-thousandth part of the maximum supply demanded on the premises is discovered, the licensee may forthwith discontinue the supply of energy to the premises in question, giving immediate notice of the discontinuance to the consumer, and need not recommence the supply until the cause of the leakage has been removed.

Appeal to Electric Inspector in regard to leakage.

**25.** (1) Where a consumer is dissatisfied with the action of a licensee under Rule 23 or Rule 24 in refusing or in discontinuing, or in not recommencing the supply of energy to his premises, the conductors and fittings of such consumer shall, on his application and on payment of the prescribed fee, be tested for the existence of leakage by an Electric Inspector or other officer appointed to assist an Electric Inspector.

(2) Any such test as is referred to in Sub-rule (1) shall be carried out within forty-eight hours of the application to make the same or of the payment of the prescribed fee, whichever is later.

(3) If the Electric Inspector or other officer, as aforesaid, on testing finds that the leakage from the consumer's conductors is less than one five-thousandth part of the maximum supply demanded on the premises, the Electric Inspector shall notify the licensee and the licensee shall, within twenty-four hours, commence or continue the supply of energy:

Provided that in this case the licensee shall refund the amount of the prescribed fee to the consumer.

(4) This Rule shall be endorsed on every notice given under the provisions of Rule 23 or Rule 24.

Declared pressure of supply to consumers.

**26.** Before commencing to supply energy to a consumer, a licensee shall declare to the consumer the pressure at which he undertakes to give the supply; and the pressure shall not, without the written consent of the consumer or the previous sanction of the Government, vary therefrom by more than 5 per cent. in the case of low or medium pressure, or by more than 12 1/2 per cent., in the case of high pressure.

Declared frequency of supply to consumers.

**27** Before commencing to supply energy to a consumer by means of an alternating current, a licensee shall declare to the consumer the frequency at which he undertakes to give the supply; and the frequency shall not, without the written consent of the consumer or the previous sanction of the Government, vary therefrom by more than 4 per cent.

**28.** A consumer may, after giving not less than twenty-four hours' notice to the licensee, enter any testing station established by the licensee in accordance with clause XIV of the Schedule to the Regulation and may examine the records of the tests made therein; and he may also take copies of or extracts from such records on payment to the licensee of a sum of one rupee for every such examination of a record covering a period of twenty-four hours or any part of twenty-four hours.

Examination of licensee's records by consumer.

**29.** A licensee may affix a seal to any meter, maximum-demand indicator or other apparatus placed upon a consumer's premises in accordance with Section 27 of the Regulation, and to any cut-out placed upon a consumer's premises in accordance with Rule 38, and no person shall break such seal without giving the licensee, and, where the meter is the property of the consumer, the consumer also, not less than forty-eight hours' notice in writing.

Sealing of meters.

**30.** Copies of plans or sections such as are referred to in Clause XVII of the Schedule to the Regulation shall be supplied by the licensee to every applicant at a price not exceeding one rupee per square foot.

Sale of plans.

**31.** The point at which the supply of energy by a licensee to a consumer shall be deemed to commence shall—

Point of commencement of supply.

(*a*) where the amount of energy supplied to a consumer or the electrical quantity contained in the supply is ascertained by meter, be in respect of a conductor from the service-line which passes through the meter, the point at which such conductor enters the meter, and in respect of a conductor from the service-line which does not pass through the meter, the point on such conductor nearest to the meter;

(*b*) where the amount of energy supplied to a consumer or the electrical quantity contained in the supply is not ascertained by meter, be the point at which the cut-out is inserted in the service-line by the licensee in accordance with Rule 38.

*Accounts and Forms.*

**32.** (1) Every licensee, unless exempted in accordance with Section 11 of the Regulation, shall cause the accounts of his undertaking to be made up to the last day of Karkatakam or to such other date as the Government may approve.

Preparation and submission of accounts.

(2) Such licensee shall prepare and render an annual statement of his accounts in accordance with the provisions of the said Section within

a period of six months from such date as aforesaid or such extended period as the Government may authorize after it is satisfied that the time allowed is insufficient owing to any cause not within the control of the licensee.

(3) The accounts shall be made up as far as circumstances permit in one or other of the prescribed forms set out in Annexures III and IV to these Rules according as the licensee is or is not a local authority and may, at the option of the licensee, be rendered either in British Indian or in Travancore currency :

Provided that the Government may, by special or general order, direct that the accounts of any undertaking shall be made up in any form it may direct in such order.

Forms of certain requisitions.

33. Requisitions under Sub-clause (4) of Clause V or Sub-clause (5) of Clause VI as the case may be, of the Schedule to the Regulation shall be made in the form set out in Annexure V or Annexure VI to these Rules.

---

## CHAPTER V.

### Precautions for the safety of the Public.

*General.*

Application of Chapter.

34. The Rules in this Chapter shall, unless there is anything repugnant in the subject or context, apply to every licensee and to every owner.

Dealing with electric shock.

35. Instructions, both in English and in the vernacular of the division, for the restoration of persons suffering from electric shock, shall be affixed in a conspicuous place in every generating station and sub-station and copies shall be obtainable from every Electric Inspector at a price to be fixed by the Government.

*Precautions to be adopted by licensee.*

Protection from lightning.

36. A licensee shall adopt efficient means for protecting any portion of an electric supply-line or any support, guard-wire or bearer-wire of an electric supply-line which is exposed in such a position as to be liable to injury from lightning.

Responsibility of licensee for his works on consumer's premises.

37. A licensee shall be responsible that all electric supply lines, fittings and apparatus belonging to him, or under his control, which may be on a consumer's premises, are maintained in a safe condition, and shall take all due

precautions to avoid risk of causing fire on such premises by reason of his electric supply-lines, fittings or apparatus or any defect therein.

Cut-out on consumer's premises.

38. A licensee shall insert a suitable cut-out in each service-line (other than an earthed neutral conductor or the earthed external conductor of a concentric cable) within a consumer's premises, in an accessible position as close as possible to the point of entry. Such cut-out shall be contained within an adequately enclosed fire-proof receptacle;

Provided that, where more than one consumer is supplied through a common service-line, each individual consumer (if he so requires) shall be given an independent cut-out at the point of junction to the common service.

Service-line on consumer's premises.

39. The following provisions shall apply to service-lines and any apparatus in connection therewith on a consumer's premises, *viz* :—

(1) All such lines being underground lines, and all apparatus in connection therewith placed by a licensee shall be so insulated and protected as to be secure under all ordinary conditions against electrical, mechanical, chemical, or other injury to the insulation and against access of moisture.

(2) From the point where any service-line enters a building, or becomes accessible without the aid of a ladder or other special appliance, such line and all apparatus in connection therewith, shall be insulated and protected in the manner prescribed by Sub-rule (1).

(3) Any metal forming part of the electric circuit of any such line shall not, unless connected with earth, be exposed so that it can be touched.

*Precautions to be adopted by owners.*

Precautions to be adopted by owners.

40. When an owner generates or uses energy—

(1) where bare conductors are used in a building, they shall be inaccessible without the aid of a ladder or other special appliance and shall have switches provided for rendering them dead whenever necessary;

(2) no repair of any part of any electrical apparatus shall be effected, while the part is charged to a pressure, exceeding low pressure, except by an authorized person;

(3) the supply of energy to every vehicle, travelling crane or the like shall be efficiently controlled by a suitable switch, so that by its means all pressure can be cut off from all apparatus concerned and from any device in connection therewith;

(4) trailing cables for portable motors shall be specially flexible, heavily insulated and protected from mechanical injury ; where the protection is by means of metallic covering, the covering shall be in metallic connection with the frame of the motor.

*Electric supply-lines and apparatus.*

Maintenance.

41. Every electric supply-line shall be maintained in a safe condition, as regards both electrical and mechanical conditions, by the person to whom the same belongs.

Accidental charge.

42. All circuits and apparatus shall be so arranged by the person to whom the same belong that there shall be no danger of any part thereof becoming accidently charged to any pressure beyond the limits of pressure for which it is intended.

Crossing metallic substances.

43. Where an electric supply-line crosses, or is in proximity to, any metallic substance, such precautions as an Electric Inspector may approve, shall be taken by the licensee or the owner, as the case may be, against the possibility of the metallic substance becoming charged ;

Provided that, where the electric supply.line was laid or erected previous to such metallic substance, the cost incurred in taking such precautions shall be refunded to the licensee or owner, as the case may be, by the person to whom the metallic substance belongs.

Cut-out.

44. Every electric supply-line (other than the earthed neutral conductor of any system or the earthed external conductor of a concentric 'cable) shall be protected, by the person to whom the same belongs, by a suitable cut-out.

Metal casings.

45. All metal casings or metallic coverings containing or protecting any electric supply-line or apparatus shall be connected with earth, by the person to whom the same belong, and shall be so joined and connected across all junction-boxes and other openings as to make good mechanical and electrical connection throughout their whole length :

Provided that this Rule shall not apply to isolated wall tubes or to brackets, electroliers, standards, switch or fan regulator covers or other fittings (other than portable hand lamps in factories) where the supply is of low pressure.

Connection with earth of generator, etc.

46. The frame of every generator, stationary motor, and, so far as is practicable, portable motor, and the metallic parts (not intended as conductors) of all transformers and regulating or controlling apparatus connected with the supply, shall be connected with earth by two separate and distinct connections with earth.

**47.** The covers or doors of all junction-boxes or pillars in any street shall be so secured that they cannot be opened except by means of a special appliance.

Junction-boxes.

**48.** In every distributing system in which there is a neutral conductor, where the pressure between the neutral conductor and an outer or phase conductor exceeds 125 volts, the neutral conductor shall be connected with earth by two separate and distinct connections with earth from the neutrel bus-bar and in accordance with the following provisions namely :—

Connection with earth of a multiwire system.

(*a*) the connection with earth of the neutral conductor shall be made at one point only on each distinct system, namely, at the generating station or sub-station, or both, as the case may be, and the insulation of the system shall be maintained at all other parts;

(*b*) the current from the neutral conductor to earth shall, in the case of a licensee's direct current distributing system, be continuously recorded, and, if at any time it exceeds one-thousandth part of the maximum supply current, steps shall immediately be taken to improve the insulation of the system;

(*c*) the connection with earth referred to in clause (*a*) of Rule 48 shall not be made by the aid of, nor shall it be in contact with any water-main, gas-main, or similar main not belonging to the licensee or owner, as the case may be, except with the consent of the owner thereof and of the Electric Inspector, a resistance, not exceeding 20 ohms, may be inserted between the inserted bus-bar and earth, and, if so inserted, it shall be of sufficient cross-sectional area to carry the current which would pass should an outer or phase conductor become accidently connected with earth ;

(*d*) the connection with earth shall not be removed except for the purpose of testing, in which case it shall be made good again as soon as such test is finished, and a record of any such disconnection shall be kept by the licensee or owner, as the case may be :

Provided that the earth connection shall not be removed, in a licensee's system except between 1 a. m. and 3 a. m. or, in an owner's system, while the generator is in operation or energy is being used.

**49.** The neutral point of the star-winding of each distinct polyphase multiwire system may be either connected with earth or insulated.

Connection with earth of polyphase system.

**50.** When concentric conductors are used, the insulation shall be maintained throughout, except that the external conductor may be connected with earth at one point:

Connection with earth of concentric conductors.

Provided that where energy is generated by an owner for use on his own premises, a concentric conductor, the external conductor of which is uninsulated and earthed, may be used.

*Medium or high pressure.*

Supply at medium or high pressure.

**51.** Where energy is to be supplied or used at medium or high pressure, notice shall be given to an Electric Inspector and the supply shall not be commenced, or continued, until or unless the following provisions have been or are complied with, namely :—

(*a*) all live parts of apparatus shall, unless accessible only to, and under the control of, an authorized person, be protected by mechanically strong metal-casing or metallic covering securely fastened throughout;

(*b*) suitable linked switches, of requisite capacity to carry and break the current, shall be inserted in each conductor, near the point of origin on the consumer's or owner's premises, as the case may be;

(*c*) every conductor, unless only accessible to an authorized person, shall be, as far as is practicable, completely enclosed in a mechanically strong metal-casing or metallic covering, securely fastened throughout or fixed in such other manner as may be approved in writing by an Electric Inspector;

(*d*) the supply to every apparatus shall be efficiently controlled by suitable linked switches, of requisite capacity to carry and break the current, in each conductor, placed near the apparatus in such a position as to be readily handled by the operator, so that by their means all pressure can be cut-off from the apparatus concerned and from any device in connection therewith;

(*e*) the word "CAUTION," both in English and in the vernacular, shall be affixed in a conspicuous position near every generator (being the property of an owner) and near every motor, and every controlling or regulating apparatus in connection with the same.

Introduction of multi-wire system to buildings.

**52.** Where the conductors of a multi-wire system between any of which there is medium or high pressure, are brought into a building for utilization at low pressure, the supply shall be delivered to two or more pairs of terminals and the wiring from those terminals shall be kept separate and distinct. If, in any such case two or more switches, terminals or cut-outs between any of which there is a difference of pressure exceeding 250 volts, are fitted within reach of one another, all their live parts shall be accessible only to authorized persons.

53. Where the pressure is medium or high, there shall be, in front of every main switchboard, a space of not less than 3 feet in width, and, if there are any attachments or bare connections at the back of the switchboard, the space (if any) behind the switchboard shall be either less than 9 inches, or more than 30 inches in width, measured from the furthest outstanding part of any attachment or conductor. If the space behind exceeds 20 inches in width, there shall be a passage way clear to a height of not less than 6 feet, save as regards any horizontal supports of the switchboard, which may be placed at a height of not less than 4 feet, 6 inches.

Main switchboard.

54. In every generating station, sub-station, junction-box or pillar in which there are any circuits or apparatus, intended for medium as well as high pressure, the respective circuits shall be made readily distinguishable from one another.

Distinction of circuits of different pressure.

*High pressure.*

55. (1) A high pressure supply shall not be delivered to any person, other than a distributing licensee, except with the approval in writing of an Electric Inspector, and subject to such conditions (if any) as such Inspector may think reasonable and proper in the circumstances, and the installation shall not be brought into use until it has been inspected by an Electric Inspector or other officer appointed to assist an Electric Inspector.

Approval of high pressure supply.

(2) Where energy is to be used by an owner at high pressure, the installation shall not be brought into use except with the approval in writing of an Electric Inspector and subject to such conditions (if any) as he may think reasonable and proper in the circumstances.

(3) When the position of a high pressure motor or other apparatus is changed, notice shall forthwith be given to the Electric Inspector showing the extent and nature of the change of position.

56. (1) A high pressure circuit, other than an aerial line, shall not be brought into use unless the insulation of every part thereof has withstood the continuous application, during one minute, in the case of every electric supply-line, machine, device or apparatus, of a pressure 100 per cent. greater than the maximum pressure to which it is intended to be subjected in use ; and the licensee or owner, as the case may be, shall duly record the results of each test and shall forward the result to an Electric Inspector :

Testing of insulation of high pressure circuit.

Provided, first, that the testing pressure shall in no case be less than 2,000 volts :

Provided, secondly, that an Electric Inspector may, if he thinks fit, accept the manufacturer's certified tests as complying with this Rule :

Provided, thirdly, that, where the normal working pressure exceeds 6,600 volts, the testing pressure need not exceed the working pressure.

(2) A high pressure electric supply-line shall, during its use, continue in the sole charge of an authorized person.

High pressure electric supply-lines and apparatus placed above ground.

57. All high pressure apparatus, including every portion of any high pressure electric supply line (other than an aerial line) placed above the surface of the ground, otherwise than in a sub-station, or in a compartment specially arranged for the purpose and accessible only to authorised persons, shall be completely enclosed in, or protected by, a mechanically strong metal-casing or metallic covering securely fastened throughout; and all circuits and apparatus in connection with the same shall be marked at frequent intervals with the word "CAUTION," both in English and in the vernacular.

*Aerial Line—all pressures.*

Minimum strength of conductors of aerial lines.

58. No conductor of an aerial line shall have a less breaking-stress than 700 lb.

Provided that, where the span is less than 50 feet and on an owner's premises, and the pressure does not exceed 250 volts, a conductor having a breaking-stress of not less than 300 lb. may be used.

Maximum intervals between supports.

59. The conductors of an aerial line shall be attached to supports at intervals, not exceeding the safe limits based on the breaking-strain of the conductor and the factor of safety prescribed in Rule 61 :

Provided that, where such a line is erected in, over, along or across any street, the interval shall not, without the consent in writing of the Electric Inspector, exceed 220 feet.

Connection with earth of metal supports.

60. Every metal support of an aerial line placed in the ground, or in such a position as to be accessible without the use of a ladder or other special appliance, shall be connected with earth.

61. The factor of safety of an aerial line shall be :—

Factor of safety.

(i) for wooden or ferro-concrete supports, at least four ;
(ii) for iron or steel supports, at least three ;
(iii) for guard wires or bearer-wires, at least three ;
(iv) for conductors, at least three ;

under all conditions, the maximum wind pressure being specified by the Government in each case ; for cylindrical bodies, the effective area shall be taken as two-thirds of the sectional area exposed to wind pressure :

Provided that, in localities where aerial lines are liable to accumulations of ice or snow, the Government may, by order in writing, specify such factor of safety as it may think fit and the conditions under which it is to be calculated.

62. (1) No conductor of an aerial line (not being a trolley-wire or a traction feeder on the same support as a trolley-wire) erected in, over, along or across any street shall be at a less height from the ground than 20 feet.

Height from ground and distance from buildings.

(2) No such conductor shall be accessible, either from the ground or from any building or structure, whether permanent or temporary, except by the aid of a ladder or other special appliance.

(3) (a) If at any time subsequent to the erection of an aerial line, any person proposes to erect a new building or structure, whether permanent or temporary, or to make in or upon any building or structure, any permanent or temporary addition or alteration, he shall, if such building, structure, addition or alteration would render the aerial line accessible otherwise than by the aid of a ladder or other special appliance, give notice in writing of his intention to the licensee or owner, as the case may be, and to the Electric Inspector and shall furnish therewith a scale drawing showing the proposed building, structure, addition or alteration and the scaffolding required during its construction, and shall not commence work upon the building, structure, addition or alteration until the Electric Inspector has certified that neither during nor after the execution of the work will the aerial line be so accessible.

(b) On receipt of such notice the licensee or owner, as the case may be, shall, without undue delay, so alter the aerial line as to ensure

that it will not be accessible, in such a manner as to contravene the provision of Sub-rule (2), either during or after the execution of the work, and may recover the reasonable cost of such alteration from the person from whom the notice was received :

Provided that the licensee or owner, as the case may be, may, before so altering the aerial line, require the person from whom the notice was received to deposit the estimated cost of such alteration :

Provided further that an Electric Inspector may, if he is satisfied that the aerial line has been so guarded as to secure the protection of persons and property from injury or risk of injury, permit the work to be executed prior to, or, in the case of a temporary addition or alteration, without the alteration, of the aerial line.

(4) Where an aerial line is on a consumer's or an owner's premises, the height from the ground or from any mineral or refuse dump, and from parts of buildings or structures to which persons have access shall (unless the conductors are adequately guarded) be not less than 15 feet or such greater height as may be necessary to prevent danger.

Safety device.

**63.** (1) Every aerial line (not being suspended from a dead bearer-wire and not being a trolley-wire) erected in, over, along or across any street or in any factory or mine shall be protected with a device approved by an Electric Inspector for rendering such line electrically harmless in case it breaks.

(2) Every such aerial line on a consumer's or an owner's premises shall, if the pressure exceeds the limits of low pressure, be similarly protected.

(1) Lines crossing or approaching each other.
(2) Lines crossing trolley wires.
(3) Guard wires.
(4) Earthing devices.

**64.** (1) (*a*) Where an aerial line crosses or is in proximity to (i) any telegraph wire, or (ii) an aerial line belonging to some other person, the licensee or owner (as the case may be) shall ensure that his aerial line is so protected as to guard against the possibility of it coming into contact with the telegraph wire or other aerial line.

(*b*) Within twenty-one days of receiving notice that a new telegraph wire or aerial line is, or is about to be, erected in proximity to his aerial line, the licensee or owner (as the case may be) shall effect the protection referred to in clause (*a*).

(*c*) Where the licensee or owner (as the case may be) erects a new aerial line in proximity to any telegraph wire,

or to any aerial line not belonging to him, he shall not bring the same into use until he has complied with clause (*a*).

(*d*) In all cases referred to in the preceding Sub-rules, the protection shall be carried out at the expense of the person whose line is last erected and to the satisfaction of the Electric Inspector.

(*e*) Where lines cross each other, the crossing shall be made in a direction as nearly at right angles as the nature of the case admits.

(*f*) All guarding arrangements should ordinarily be erected on the posts of the owners or licensees who shall, in that case, be responsible for their efficient maintenance.

(2) In the case of a crossing over a trolley-wire the guarding will be in accordance with the following conditions (*vide* also attached diagrams), namely:—

(*a*) Where there is only one trolley-wire, two guard-wires shall be erected as in diagram A.

(*b*) Where there are two trolley-wires and the distance between them does not exceed 15 inches, two guard-wires shall be erected as in diagram B.

(*c*) Where there are two trolley-wires and the distance between them exceeds 15 inches but does not exceed 48 inches, three guard-wires shall be erected as in diagram C.

(*d*) Where there are two trolley-wires and the distance between them exceeds 48 inches, each trolley-wire shall be separately guarded as in diagram D.

(*e*) The rise of the trolley boom shall be so limited that, if the trolley leaves the trolley-wire, it shall not foul the guard-wires.

(*f*) Where a telegraph-wire is liable to fall or be blown down upon an arm, stay-wire or span-wire, and so slide down upon a trolley-wire, guard hooks shall be provided to prevent such sliding.

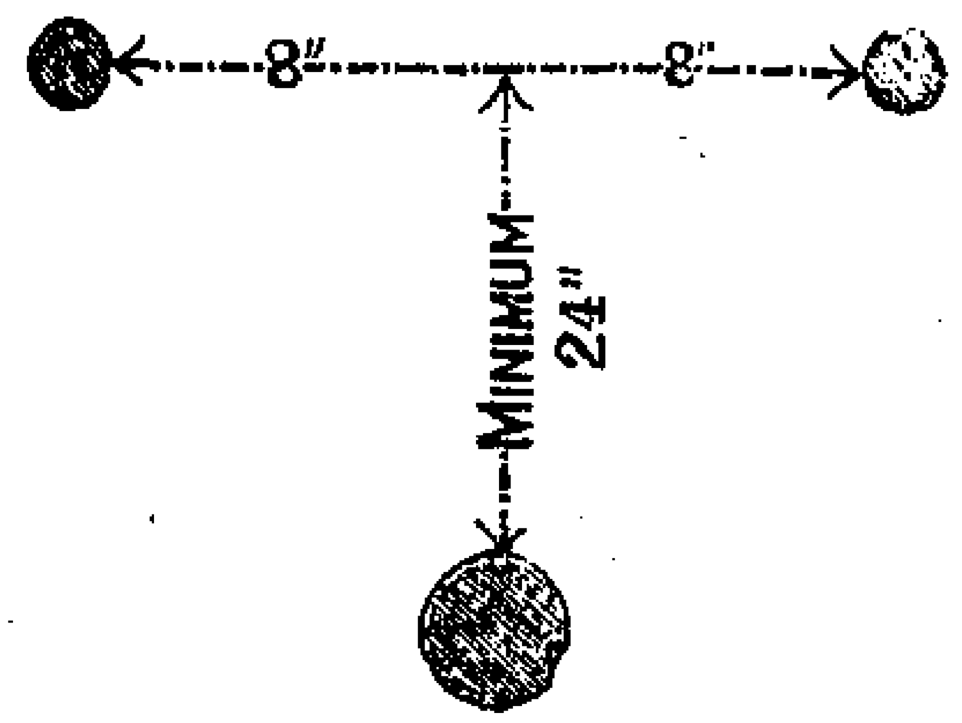



DIAGRAM A

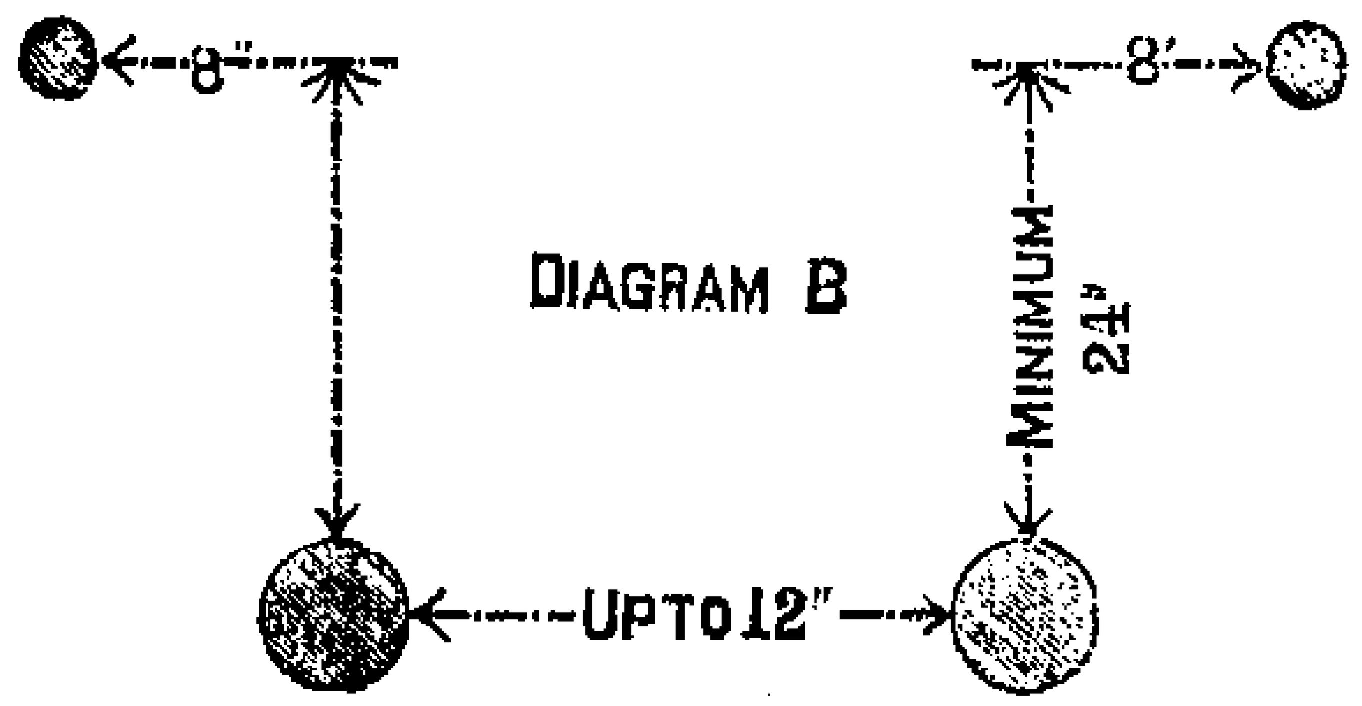



DIAGRAM B

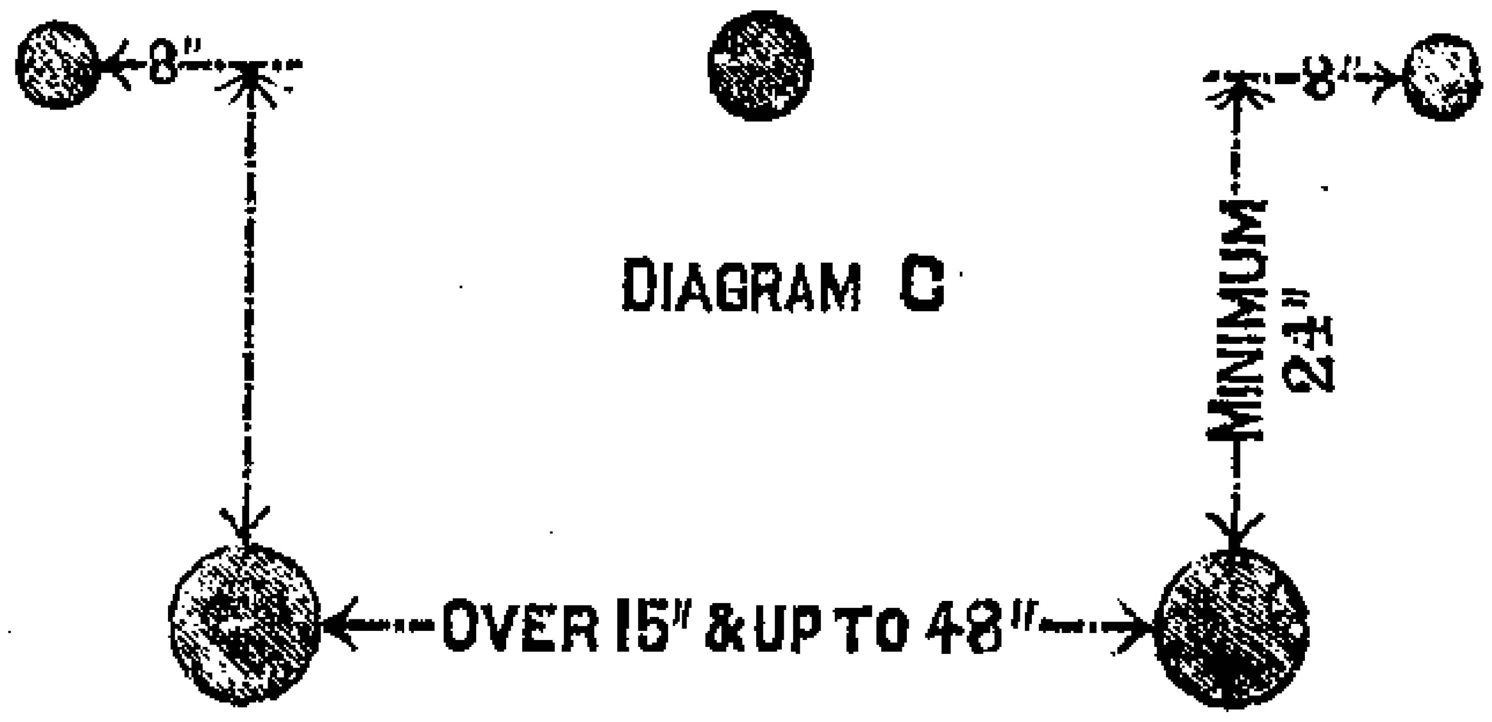



DIAGRAM C

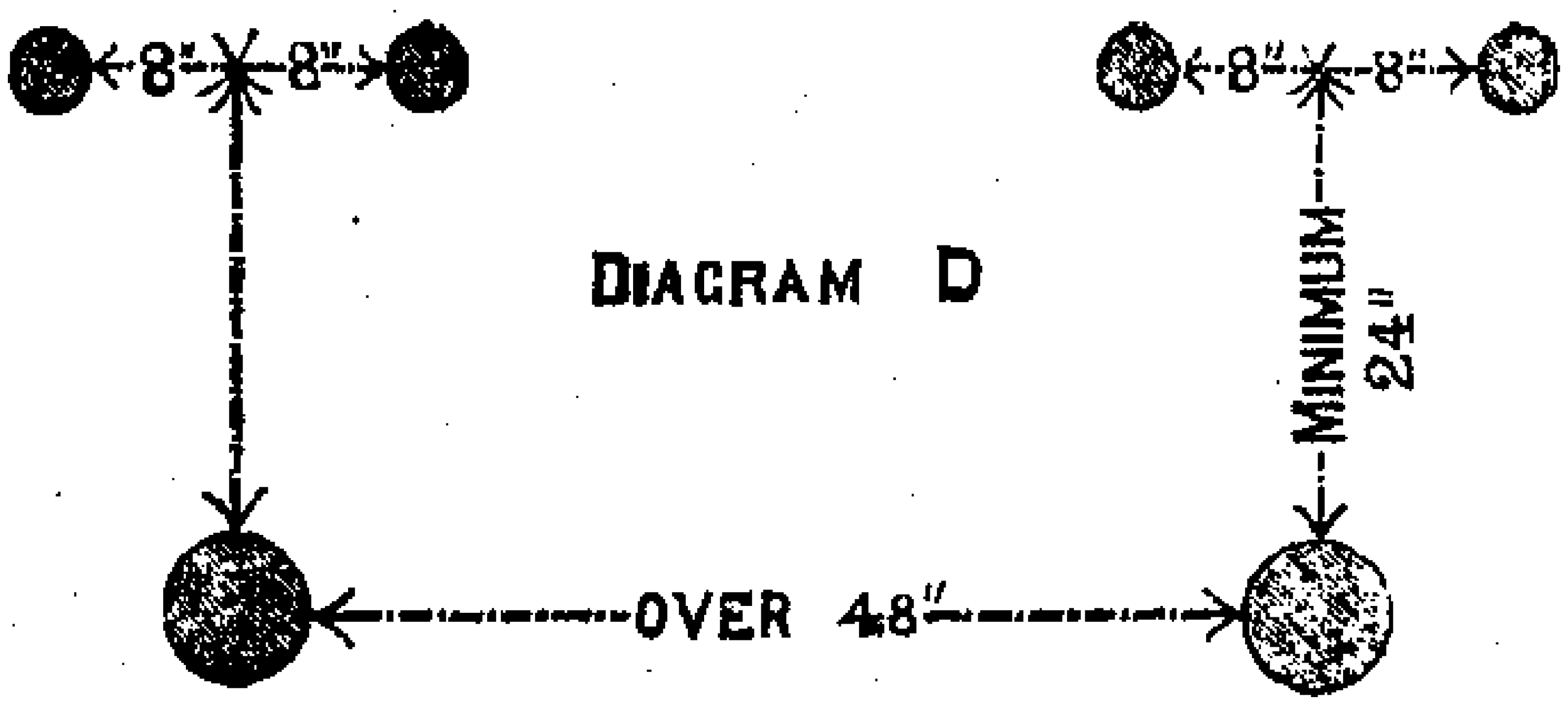



DIAGRAM D

(3) Where guard-wires are used, they shall fulfil the following conditions, namely :—

(a) Every guard-wire shall be connected with the earth at each point at which its electrical continuity is broken and, in the case of electric traction lines, shall also be connected, at intervals of not more than five spans, with the rails.

(b) Every guard-wire shall have a breaking-stress of not less than 1,500 lb. and shall, if made of iron or steel, be galvanized.

(c) Every guard-wire, or cross-connected system of guard-wire, shall have sufficient current-carrying capacity to ensure the rendering dead, till the contact has been removed, of any live wire coming into contact with it, without risk of fusing of the guard-wire or wires.

(d) Every guard-wire or system of guard-wire and its supports shall have sufficient strength to carry without breaking the extra load which may be put on it by the fall of any or all the wires guarded.

(4) Alternative methods of guarding may be substituted with the approval of the Electric Inspector.

Service-lines from aerial lines.

**65.** No service line or tapping shall be taken off an aerial line otherwise than at a point of support.

High pressure aerial lines.

**66.** High pressure aerial lines shall not be brought into use until they have been approved by an Electric Inspector, and, where such lines are used, the licensee or owner, as the case may be, shall make arrangements so as to prevent any person from climbing up any of the supports without the aid of a ladder or special appliance.

Suspending of aerial lines.

**67.** Every aerial line, if covered with insulating material, shall be efficiently suspended from a bearer-wire or bearer-wires by means of insulating hangers at distances of not more than 3 feet apart: and every bearer-wire, if made of iron or of steel, shall be galvanized.

Unused aerial line to be removed.

**68.** Where an aerial line, erected in, over, along or across any street ceases to be used as an electric supply line, it shall be maintained in a safe mechanical condition in accordance with the provisions of Rule 61, or, if so required by an Electric Inspector, be removed within a period of fourteen days from the date of such Inspector's requisition for removal.

*Electric traction.*

Additional Rules for Electric traction

**69.** Rules 70 to 83 shall apply in the case of energy used for purposes of traction where the provisions of Part III of the Regulation apply. In these Rules, the conductor used for transmitting energy to a vehicle is referred to as the "line", and the other conductor as the "return".

Pressure of supply to vehicle.

**70.** Notwithstanding the provisions of Rule 55, the pressure of supply on any trolley-wire or other conductor used in direct electrical and mechanical connection with any vehicle shall not be high, except with the written approval of the Government and subject to such conditions (if any) as the Government may think reasonable and proper in the circumstances.

Insulation of lines and returns.

**71.** Every line shall be insulated throughout and every return may be insulated throughout or may be uninsulated to the extent hereinafter provided.

Insulation of returns.

**72.** Where any rails on which cars run, or any conductors, laid between or within three feet of such rails, form any part of a return, such part may be uninsulated. All other returns or parts of a return shall be insulated, unless of such conductivity as to secure the conditions required by Rule 74.

Uninsulated return to be negative.

**73.** (1) Where any part of a return is uninsulated, it shall be connected with the negative terminal of the generator.

(2) Where the owner's uninsulated return is in proximity to any metallic pipe, structure or substance not belonging to him, he shall, if so required by the person to whom such pipe, structure or substance belongs, connect his return therewith at the expense of such person.

Earth return current.

**74.** (1) Where the return is partly or entirely uninsulated, the owner shall, in the construction and maintenance of his system, adopt such means for reducing the difference produced by the current between the potential of the uninsulated return at any one point and the potential of the uninsulated return at any other point as to ensure that the difference of potential between the uninsulated return and any metallic pipe, structure or substance in the vicinity shall not exceed four volts, where the return is relatively positive, or one and one-third volts, where the return is relatively negative.

(2) The person to whom any such pipe, structure, or substance as is referred to in Sub-rule (1) belongs, may, in respect of the same, require the owner of the uninsulated return, at reasonable times and intervals, to ascertain by test in his presence, or in that of his representative, whether

the condition specified in the said Sub-rule is secured; and, if such condition as aforesaid found to be secured, all reasonable expenses of, and incidental to, the carrying out of the test shall be borne by the owner of the metallic pipe, structure or substance.

Difference of potential on return.

75. Where the return is partly or entirely uninsulated, the owner shall keep a continuous record of the difference of potential, during the working of his system, between every junction of an insulated return with an uninsulated return and the point on the route most distant from that junction, and the difference of potential shall not, under normal running conditions, exceed a mean value between the highest momentary peak and the average for the hour of maximum load of seven volts.

Leakage on conduit system.

76. Where both the line and the return are placed within a conduit, the following conditions shall be secured in the construction and maintenance of the system :—

(a) Where the rails are used to form any part of the return, they shall be electrically connected at distances apart of not more than 100 feet, with the conduit by means of copper strips having a cross sectional area of at least one-sixteenth of a square inch or by other means of equal conductivity. Where the return is wholly insulated and contained within the conduit, the latter shall be connected with earth at the generating station or sub-station through an instrument suitable for the indication of any contact or partial contact of either the line or the return with the conduit.

(b) The leakage-current shall be ascertained daily, before or after the hours of running, when the line is fully charged; and, if at any time it is found to exceed one ampere per mile of single tramway track, the transmission and use of energy shall be suspended unless the leakage is stopped within twenty-four hours.

Leakage on other than conduit system.

77. Where both the line and the return are not placed within a conduit, the leakage-current shall be ascertained daily before or after the hours of running, when the line is fully charged; and, if at any time it is found that it exceeds one-half of an ampere per mile of single tramway track, the transmission and use of energy shall be suspended unless the leakage is stopped within twenty-four hours.

Passengers not to have access to electric circuit.

78. Precautions to the satisfaction of an Electric Inspector shall be taken by the owner of every vehicle to prevent :—

(a) the access of passengers to any portion of the electric circuit where there is danger to them of receiving an electric shock;

(b) any metal hand-rail or other metallic substance liable to be handled by passengers becoming charged.

Current density in rails

**79.** Where any rails on which cars run are used as a return, the current density in such rails shall not, under ordinary working conditions, exceed nine amperes per square inch of cross-sectional area.

Isolation of sections.

**80.** Every trolley-wire shall be constructed in sections not exceeding one mile in length, and means shall be provided for isolating each section.

Minimum size and strength of trolley-wire.

**81.** No trolley-wire shall be of less cross-sectional area than eighty one-hundredth of a square inch nor shall it have a less breaking-stress than 4,500 lb.

Height of trolley-wire and length of span.

**82.** A trolley-wire or a traction-feeder on the same supports as a trolley-wire shall nowhere be at a height from the surface of the street of less than 17 feet, except where it passes under a bridge or other fixed structure, or through or along a tunnel or mine-shaft or the like, in which case it shall be suspended to the satisfaction of an Electric Inspector. The intervals between the supports shall not exceed 140 feet.

Records.

**83.** (1) The owner shall, so far as is consistent with his system of working, keep the following records namely :—

(a) Daily records showing—

the maximum working current from the source of supply;

the maximum working pressure at the source of supply;

difference of potential, as required by **Rule 75**; and

the leakage current (if any), as required by Rule 76 and Rule 77.

(b) Occasional records showing—

every test made under Rule 74,

every stoppage of leakage, together with the time occupied; and particulars of any abnormal occurrence affecting the electrical working of the system.

(2) These records shall be open to inspection by an Electric Inspector or by any person authorized in writing by an Electric Inspector.

*Mines and oil-fields.*

Additional Rules for mines and oil fields.

84. (1) Rule 85 and Rules 87 to 102 shall apply in case of energy used in mines where the provisions of Part III of the Regulation apply, but they shall not apply in the case of any apparatus used above ground, except such as may directly affect the safety of persons below ground.

(2) The said Rules and Rule 86 shall also apply in case of energy used in oil-fields.

Responsibility for observance.

85. (1) It shall be the duty of the owner, agent, or manager of the mine or of the agent of any company operating in the oil-field, or of the owner of one or more drilled wells situated in the oil-field to comply with and enforce the following Rules and it shall be the duty of all persons employed to conduct their work in accordance with the Rules.

(2) An authorized person shall be on duty in every mine or oil-field while energy is being used therein.

Notices.

86. On or before the first day of Kanni in every year, an annual return giving the size and type of apparatus and any particulars as to the circumstances of its use which may be required by the person to whom the return is to be sent shall be sent by the person specified in Rule 85 in the form set out in Annexure VIII to these Rules:

Provided that this Rule shall not apply to telephones and signalling apparatus or to low pressure installations for lighting only.

Plans.

87. (1) A proper plan on the same scale as the plan kept at the mine in fulfilment of the requirements of the Travancore Mines and Minerals Regulation, 1103, shall be kept in the office at the mine, showing the position of all fixed apparatus and conductors in the mine, other than lights, telephones or signalling apparatus, or cables for the same. The said plan shall be corrected every six months and the date of correction entered on the plan by the manager of the mine, and it shall be produced to an Electric Inspector or an Inspector of Mines at any time on his request.

(2) A similar plan, on a scale not less than sixteen inches to the mile, shall be kept by the manager or owner of one or more wells in any oil-field, showing similar particulars and subject to correction and inspection as prescribed in Sub-rule (1).

(3) A similar plan, on such scale as the Government may require, shall be kept in the office of the licensee or person transmitting or distributing energy in a mine or oil-field, showing the position of all electric

supply lines under his control, and subject to correction and inspection as prescribed in Sub-rule (1).

Lighting, communications and fire precautions.

**88.** (1) In all places in a mine lighted by electricity, where failure of the electric light at any time would be likely to cause danger, one or more safety lamps or other proper lights shall be kept continuously burning.

(2) Efficient means shall be provided in every mine for communicating between the place in which the switchgear provided under Sub-rule (1) of Rule 95 is erected and the shaft-bottom or main distributing centre in the pit.

(3) Appliances for extinguishing fires shall be kept ready for immediate use in every place in a mine containing apparatus, other than cables, telephones and signalling apparatus.

Isolation and fixing of transformer, switchgear, etc.

**89.** (1) Where necessary to prevent danger or mechanical damage, transformers and switchgear shall be placed in a separate room, compartment, or box.

(2) Unless the apparatus is so constructed, protected, and worked as to obviate the risk of fire, no inflammable material shall be used in the construction of any room, compartment, or box containing apparatus, or in the construction of any of the fittings therein. Each such room, compartment or box shall be substantially constructed and shall be kept dry.

(3) Adequate working space and means of access clear of obstructions and free from danger shall, in so far as circumstances permit, be provided for all apparatus that has to be worked or attended to, and all handles intended to be operated shall be conveniently placed for that purpose.

Method of earthing.

**90.** Where earthing is necessary, it shall be carried out in a mine by connection to an earthing system at the surface of the mine, and, in all cases, in a manner approved by an Electric Inspector.

Construction and insulation of apparatus, and earthing of same.

**91.** (1) All apparatus and conductors shall be sufficient in power and size and of sufficient mechanical strength, for the work they may be required to do, and so constructed, installed, protected, worked and maintained as to prevent danger so far as is reasonably practicable. The exposure of live parts shall be avoided.

(2) All insulating material shall be chosen with special regard to the circumstances of its proposed use. It shall be of mechanical strength sufficient for its purpose, and, so far as is practicable, it shall be of such a

character or so protected as fully to maintain its insulating properties under working conditions of temperature and moisture.

(3) Every part of a system shall be kept efficiently insulated from earth, except that (*i*) the neutral point of a polyphase system may be earthed at one point only; (*ii*) the mid-voltage point of any system, other than a concentric system, may be earthed at one point only; and (*iii*) the other conductor of a concentric system shall be earthed.

(4) Earth or fault detectors or recorders shall be connected up in every system in a mine to show immediately any defect in the insulation of the system. The readings of these instruments shall be recorded daily in a book kept at the generating station, sub-station or switch room.

Earthing, metal, etc.

92. (1) All metallic sheaths, coverings, handles, joint-boxes, switch-gear frames, instrument covers, switch and fuse covers and boxes, and all lampholders, unless efficiently protected by an earthed or insulating covering made of fire-resisting material, and the frames and bedplates of generators, transformers, and motors (including portable motors), shall be earthed by connection to an earthing system in the manner prescribed in Rule 90.

(2) Where the cables are provided with a metallic covering constructed and installed in accordance with Rule 96 (*d*), such metallic covering may be used as a means of connection to the earthing system. All the conductors of an earthing system shall have a conductivity at all parts and at joints at least equal to 50 per cent. of that of the largest conductor used solely to supply the apparatus a part of which it is desired to earth:

Provided that no conductor of an earthing system shall have a cross-sectional area of less than ·022 of a square inch.

(3) All joints in earth conductors and all joints to the metallic covering of the cables shall be properly soldered or otherwise efficiently made. No switch, fuse, or circuit-breaker shall be placed in any earth conductor.

(4) This Rule shall not apply (except in the case of portable apparatus) to any system in a mine in which the pressure does not exceed low pressure direct current or 125 volts alternating current.

Motors and their transformers.

93. (1) Where energy is distributed at a pressure higher than medium pressure (i) it shall not be used without transformation to medium or low pressure except in fixed machines in which the high pressure parts are stationary; and (ii) portable motors under 20 h. p. shall be supplied through a transformer stepping down to medium or low pressure.

(2) Where energy is transformed, suitable provision shall be made to guard against danger by reason of the lower pressure apparatus becoming accidentally charged above its normal pressure by leakage from, or contact with, the higher pressure apparatus.

Switch gear and terminals.

**94.** Switch gear and all terminals, cable-ends, cable joints and connections of apparatus shall be totally enclosed, and constructed and installed so that—

(i) all parts shall be of mechanical strength sufficient to resist rough usage ;

(ii) all conductors and contact areas shall be of ample current-carrying capacity and all joints in conductors shall be properly soldered or otherwise efficiently made ;

(iii) the lodgement of any matter likely to diminish the insulation, or affect the working of any switchgear shall be prevented ;

(iv) all live parts shall be so protected or enclosed as to prevent persons accidentally coming into contact with them and danger from arcs, short-circuits, firewater, gas or oil ;

(v) where there may be risk of igniting gas, coal-dust, oil or other inflammable material, all parts shall be so protected as to prevent open sparking ;

(vi) every switch or circuit-breaker shall be capable of opening the circuit it controls, without danger, on any short circuit with which it may have to deal.

Cutting off supply.

**95.** (1) Properly constructed switchgear for cutting off the supply of energy to the mine or oil-field shall be provided at the surface of the mine or oilfield at a point approved by an Electric Inspector ; and during the time any cable is live a person authorized to operate the said switchgear shall be available within easy reach thereof.

(2) Efficient means, suitably placed, shall be provided for cutting off all pressure from every part of a system, when necessary to prevent danger.

(3) Such efficient means shall be provided for cutting off all pressure automatically from the part or parts of the system affected in the event of a fault as may, in the opinion of an Electric Inspector, be necessary to prevent danger.

(4) Every motor shall be controlled by switchgear for starting and stopping, so arranged as to cut off all pressure from the motor and from all apparatus in connection therewith, and so placed as to be easily worked by the person appointed to work the motor.

(5) If a concentric system is used, no switch, fuse, or circuit-breaker shall be placed in the outer conductor, or in any conductor connected thereto, except that, if required, a reversing switch may be inserted in the outer conductor at the place where the energy is being used ;

Provided that, subject to the connection of the outer conductor with the earthing system being maintained, switches, fuses or circuit-breakers may be used to break the connection with the generators or transformers supplying the energy.

96. All cables in mines, other than flexible cables for portable apparatus, shall comply with the following requirements :—

Cables in mines.

(a) They shall be covered with insulating material (except that the outer conductor of a concentric system may be bare. They shall be efficiently protected from mechanical damage and supported at sufficiently frequent intervals and in such a manner as adequately to prevent danger or damage to the cables.

(b) (i) Except as provided in clause (c) or, with the consent in writing of an Electric Inspector and subject to the provisions of clause (f) and to such further conditions as the Electric Inspector may impose, no cables other than concentric cables, or two-core cables or multicore cables protected by a metallic covering, or single-core cables which contain all the conductors of the circuit, shall be used where the pressure exceeds low pressure continuous current or 125 volts alternating current.

(ii) The lead sheath of lead sheathed cables and the iron or steel armouring of armoured cables respectively shall be of a thickness not less than that recommended from time to time by the British Engineering Standards Association.

(c) Where the medium-pressure direct-current system is used, two singlecore cables may be used for any circuit, if their metallic covering are bonded together by earth conductors so placed that the distance between any two consecutive bonds is not greater than 100 feet measured along either cable ;

(d) The metallic covering of every cable shall be (i) electrically continuous throughout ; (ii) earthed, if it is required by Sub-rule (1) of Rule 92 to be earthed, by a connection to the earthing system of not less conductivity than the same length of the said metallic covering ; (iii) efficiently protected against corrosion where necessary ; (iv) of a conductivity at all parts and at all joints at least equal to 50 per cent. of the conductivity of the

largest conductor enclosed by the said metallic covering, and (v) where there may be risk of igniting gas, coal-dust, or other inflammable material, so constructed as to prevent, as far as is practicable, the occurrence of open sparking as the result of any fault or leakage from live conductors:

Provided that, where two single-core cables protected by metallic covering bonded together in accordance with clause *(c)* of this Rule are used for a circuit, the conductivity of each of the said metallic coverings at all parts and at all joints shall be at least equal to 25 per cent. of the conductivity of the conductor enclosed thereby.

*(e)* Cables and conductors, where joined up to motors, transformers, switchgear, and other apparatus, shall be installed so that (i) they are mechanically protected by securely attaching the metallic covering to the apparatus ; and (ii) the insulating material at each cable end is efficiently sealed so as to prevent the diminution of its insulating properties. Where necessary to prevent abrasion or to secure gas-tightness, there shall be properly constructed glands or bushes.

*(f)* Unarmoured cables or conductors used with the consent of an Electric Inspector as provided in sub-clause (i) of clause *(b)* shall be either conveyed in pipes or casings or suspended from efficient insulators by means of some non-conducting material which will not cut the covering and which will prevent contact with any timbering or metal work.

Flexible cables.

**97.** (1) Flexible cables for portable apparatus shall be two-core or multicore and covered with insulating material which shall be efficiently protected from mechanical damage. If a flexible metallic covering be used either as the outer conductor of a concentric system or as a means of protection from mechanical damage, the same shall not be used by itself to form an earth conductor for the portable apparatus, but it may be used for that purpose in conjunction with an earthing core or other earthing wire.

(2) Every flexible cable for portable apparatus shall be connected to the system and to the portable apparatus itself by a properly constructed connector.

(3) At every point where flexible cables are joined to main cables, a switch capable of entirely cutting off the pressure from the flexible cables shall be provided.

(4) No lampholder shall be in metallic connection with the guard or other metal work of a portable lamp.

98. (1) An electrician shall be appointed in writing by the owner, agent or manager of the mine or by the agent or the owner of one or more wells in an oil-field to supervise the apparatus. If necessary for the proper fulfilment of the duties detailed in this Rule, one or more assistants to the electrician shall be appointed by the aforesaid authority.

Supervision and sundry precautions.

(2) Every person appointed to work, supervise, examine, or adjust any apparatus shall be competent for the work that he is set to do. No person except the electrician, or a competent person acting under his supervision, shall undertake any work where, in order adequately to avoid danger, technical knowledge or experience is required.

(3) The electrician shall be responsible for the proper performance by himself, or by an assistant appointed under Sub-rule (1), of the following duties, namely :—

(i) the thorough examination of all apparatus (including testing of earth conductors and metallic coverings for continuity) as often as may be necessary to prevent danger ; and

(ii) the examination and testing of all new apparatus, and of all apparatus re-erected in the mine before it is put into service in a new position :

Provided that, in the absence of the electrician for more than three days, the owner, agent or manager of the mine or the agent or owner of one or more oil-wells in an oil-field shall appoint in writing an efficient substitute.

(4) The electrician shall keep at the mine or oil-field a log-book made up of daily log-sheets kept in the forms set out, respectively for mines and oil-fields, in Annexure IX to these Rules. The said log-book shall be produced at any time on request to an Inspector of Mines or an Electric Inspector.

(5) Should there be a fault in any circuit, the part affected shall be made dead without delay, and shall remain so until the fault has been remedied.

(6) For the prevention of danger, all apparatus shall be kept clear of obstruction and free from dust, dirt and moisture. Inflammable or explosive material shall not be stored in any room, compartment, or box containing apparatus, or in the vicinity of apparatus.

(7) Before any conductor or apparatus is handled, adequate precautions shall be taken, by earthing or other suitable means, to discharge electrically such conductor or apparatus, and any adjacent conductor or apparatus, if there is danger therefrom, and to prevent any conductor or

apparatus from being accidentally or inadvertently electrically charged when persons are working thereon. While lamps are being changed the pressure shall be cut off.

Provided that this Sub-rule shall not apply to the cleaning of commutators and slip rings working at low or medium pressures.

(8) The person authorised to work an electrically driven coal-cutter or other portable machine shall not leave the machine while it is working, and shall, before leaving the place where such machine is working ensure that the pressure is cut off from the flexible trailing cable which supplies such machine. Trailing cables shall not be dragged along by the machine when working.

(9) Every flexible cable shall be examined periodically by the person authorised to work the machine, and, if such cable is used with a portable machine, he shall examine it at least once in each shift. If such cable is found to be damaged or defective, it shall forthwith be replaced by a spare cable in good and substantial repair. No damaged or defective cable shall be further used underground until it has been properly repaired.

Precautions where gas exists.

**99.** (1) In any part of a mine or oil-field or in any working approaching such part, in which inflammable gas or vapour, although not normally present, is likely to occur in quantity sufficient to be indicative of danger, the following additional requirements shall be satisfied as regards all apparatus, including such apparatus as is working at low pressure :

(*a*) All cables, apparatus, signalling wires and signalling instruments shall be constructed, installed, protected, worked and maintained, so that in the normal working thereof there shall be no risk of open sparking.

(*b*) All motors shall be constructed so that, when any part is live, all rubbing contacts (such as commutators and slip rings) are so arranged or enclosed as to prevent open sparking.

(*c*) The pressure shall be switched off the apparatus forthwith if open sparking occurs, and during the whole time that examination or adjustment disclosing parts liable to open sparking is being made. The pressure shall not be switched on again until the apparatus has been examined by the electrician or one of his duly appointed assistants and the defect (if any) has been remedied or the adjustment made.

(*d*) Every electric lamp shall be enclosed in an air-tight fitting, and the lamp globe itself shall be hermetically sealed.

(e) A safety lamp shall be provided and kept continually burning near each motor when working and, should the appearance of the flame of such safety lamp indicate the presence of inflammable gas, all pressure shall immediately be cut off from apparatus in the vicinity thereof and the matter shall be reported forthwith to an official of the mine.

(2) If at any time in any place in such mine the percentage of inflammable gas in the general body of the air is found to exceed one and a quarter, the supply of energy shall at once be cut off from all cables and apparatus in that place and shall not be recontinued so long as the percentage of the inflammable gas exceeds that amount.

Shot-firing and signalling in mines.

**100.** (1) Where shot-firing is being carried on in any mine :—

(a) Temporary precautions shall be taken to protect conductors and apparatus from injury.

(b) Current from lighting or power circuits shall not be used for firing shots.

(c) Shot firing cables shall be covered and protected as provided by Rule 97 for flexible cables. Adequate precautions shall be taken to prevent them from touching other cables and apparatus.

(2) Where electrical signalling is used in any mine :—

(a) Adequate precautions shall be taken to prevent signal and telephone wires from touching cables and other apparatus.

(b) The pressure used in any one circuit shall not exceed 15 volts.

(c) Contact makers shall be so constructed as to prevent the accidental closing of the circuit.

Haulage in mines.

**101.** Haulage by electric locomotives on the overhead trolley-wire system, at pressures not exceeding medium, and haulage by storage-battery locomotive, may be used in any mine or oil-field, with the consent in writing first obtained of an Electric Inspector in all cases, and subject to such conditions affecting safety as may be made by him.

Exemptions.

**102.** (1) The provisions of Rule 85 to 100, both inclusive, shall not apply in any case, in which exemption is obtained on such conditions as he may prescribe, from an Electric Inspector, on the ground either of emergency or special circumstances.

(2) Notwithstanding anything in these Rules, any electrical plant or apparatus installed, or in use, in any mine, or in any oil-field before the coming into force of these Rules, may be continued in use unless an Electric Inspector, after consulting the Chief Inspector of Mines, shall otherwise direct, but subject to any conditions affecting safety that such Electric Inspector may impose.

*Relaxation of Rules.*

By the Government.

**103.** The Government may, by order in writing, direct that any of the provisions of Rules 36 to 102, both inclusive be relaxed in any particular case to such extent and subject to such conditions (if any) as they may think reasonable and proper in the circumstances.

By Electric Inspector.

**104.** (1) An Electric Inspector may by order in writing, direct that Rules 35, 46, 53, 56 (1), 59, 60, 61, 62 (1) and 63, be relaxed in any particular case to such extent and subject to such conditions (if any) as he may think reasonable and proper in the circumstances.

(2) Where the pressure on any system does not exceed 125 volts, an Electric Inspector may, by order in writing, direct that any of the provisions of Rules 36 to 40, both inclusive and 47 to 99, both inclusive, be relaxed as regards such system to such extent and subject to such conditions as he may think fit.

(3) Every relaxation so directed shall be reported forthwith to, and shall be subject to disallowance or revision by, the Government.

---

## CHAPTER VI.

### Penalties and Miscellaneous.

Responsibility for observance of Rules.

**105.** Licensees and owners, and their agents and managers shall be responsible for the observance of such of the Rules in Chapter V of these Rules as impose a duty on a person not therein specified.

Penalty for breaking seal.

**106.** Where, in contravention of Rule 29, any seal referred to in that Rule is broken, the consumer, upon whose premises the seal was placed, shall be punishable with fine which may extend to fifty rupees.

**107.** Whoever, being a licensee or owner, or the agent or manager of a licensee or owner, commits a breach of these Rules or being a person specified in Rule 62 (3) (*a*) commits a breach of that Rule, shall be punishable for every such breach with fine which may extend to three hundred rupees, and in the case of a continuing breach with a further fine which may extend to fifty rupees for every day after the first, during which he is convicted of having persisted in the breach.

Penalty for breach of Rules.

**108.** All persons entering, in pursuance of the Regulation or these Rules, any building which is used as a human dwelling or a place of worship shall, in making such entry, have due regard, so far as may be compatible with the exigencies of the purpose for which such entry is made, to the social and religious usages of the occupant of the building entered.

Mode of entry.

**109.** These Rules shall be binding on all persons, companies and undertakings to whom licences have been granted or with whom agreements have been made by or with the sanction of Government for the supply or use of electricity before the commencement of the Regulation.

Application for Rules.

---

## ANNEXURE I.

[*See* Rule 2 (*b*).]

*Specification relating to the Deposition of Silver.*

The electrolyte shall consist of a solution of from 15 to 20 parts by weight of silver nitrate in 100 parts of distilled water. The solution must only be used once, and only for so long that not more than 30 per cent. of the silver in the solution is deposited.

The anode shall be of silver, and the kathode of platinum. The current density at the anode shall not exceed 1/5 ampere per square centimetre and at the kathode 1/50 ampere per square centimetre.

Not less than 100 cubic centimetres of electrolyte shall be used in a voltametre.

Care must be taken that no particles which may become mechanically detached from the anode shall reach the kathode.

Before weighing, any traces of solution adhering to the kathode must be removed, and the kathode dried.

---

## ANNEXURE II.

[ *See* Rule 12.]

*Model Form of Draft Licence under the Travancore Electricity Regulation, 1097.*

[ *See* Section 3. ]

———————————Electric Licence, 11...

### DRAFT LICENCE.

Signature of Applicant or his Agent (if any.) }

*Address of applicants.*

The——————————Electric Licence, 11....

Licence for the supply of energy granted by the Government of Travancore
under the Travancore Electricity Regulation, 1097.
Licence is hereby granted to, 1——————————

——————————————————

——————————————————

1 The licensee may be any local authority, company or individual. In the case of a firm, give names of individual partners.

[carrying on business in partnership under the name and style of ]——————————
to supply electrical energy in the area 2 with the powers and upon the terms and conditions all specified below.

2 See clause 4.

*Short title.*

1. This licence may be cited as "The ——————————3 Electric Licence, 11 ."

Short title to agree with heading.

*Interpretation.*

2. The several words, terms and expressions to which by the Travancore Electricity Regulation, 1097, or by the Rules thereunder, meanings are assigned shall have in this licence the same respective meanings, provided that in this licence :—

(1) the Regulation shall mean the Travancore Electricity Regulation, 1097 ;

(2) the expression "the licensees" shall mean and include the said 4—————————— and their [or his] permitted assigns ; and

4 Individual names as in preamble in the case of a firm.

(3) the expression "deposited map" shall mean the plan of the area of supply hereinafter specified which has been deposited with Government in pursuance of the Rules under the Regulation, which plan is signed for the purpose of identification by the Chief Secretary to the Government, and by the applicants under the name and style of ______

*Security 5*

5 See Section (4) (1) (*c*) of the Regulation and clause I of the Schedule to the Regulation.

3. (1) The period within which, under clause I (*b*) of the schedule to the Regulation the licensee shall show that he is in a position fully and efficiently to discharge the duties and obligations imposed on him shall be ______

(2) The period within which, under clause I (*b*) of the Schedule to the Regulation the licensees shall deposit or secure such sum as therein mentioned, and the sum so to be deposited or secured shall, unless otherwise ordered by the Government under that clause, be ______ and Rupees ______ respectively.

*Area of supply 6*

6 The area for which each local authority is constituted should be distinctly marked or coloured. See Rule 9 (*b*).

4. The area above referred to within which the supply of energy is authorised by this licence (the area of supply under the Regulation) is the whole of the area bounded as follows :—

*North*—By

*East*—By

*South*—By

*West*—By

the boundaries whereof are delineated in the deposited map.

*Power to lay mains outside area of supply. 7*

7. This clause should be retained only where the licensee is to supply energy from a generating station outside area of supply. Where power to cross an intervening area is sought under Section 3 (1) of the Regulation enter details here.

5. The licensee may lay down or place electric supply-lines for the conveyance and transmission of energy from a generating station situated or to be situated at ______ (outside the area of supply) to the boundary of the area of supply.

*Limits within which the supply of energy is to be compulsory.* 8

8 See Section 3 (2) (*d*) of the Regulation.

6. (1) The works to be executed to the satisfaction of the Government under clause IV of the Schedule to the Regulation are the following, namely—9

______________________________

______________________________

______________________________

______________________________

9 It is open to the licensee to propose a "compulsory area" or to the Government to make provision for such an area. Ordinarily it will be sufficient to enter here the names of "compulsory streets" in which the licensee will lay distributing mains. If no compulsory works are specified in the licence, the Government may subsequently direct what works are to be executed : see clause IV of Schedule.

(2) If the licensee fails to comply with the provisions of Sub-clause (1), the licence may be revoked 10

10 See note to Sub-clause (1) of this clause.

*Nature of the supply and limits of price to be charged for the supply of energy.*

7 (1) The nature of the supply shall be ____________________ or such other as the Government may allow.

(2) The prices to be charged by the licensee for energy supplied by him shall not exceed the following maxima, namely :—

______________________________

or in the case of a method of charge approved by the Government in accordance with Sub-sections (3) and (4) of Section 24 of the Regulation such maxima as the Government may fix on approving the matter.

*Breaking up of streets, railways and tramways. 11*

11 This clause to be omitted if no such powers are required in the licence. See Section 12 (5) of the Regulation and proviso to the same. Powers can be obtained subsequently ; see Rule 21.

8. The licensee is specially authorised to open and break up the soil and pavement of the following streets or parts of streets which are not repairable by the Government or by a local authority,

and of the following railways and tramways or parts of railways and tramways, *viz* :—

(*a*) Streets,
(*b*) Railways, 12
(*c*) Tramways, 12

12 In ordinary cases, the level crossings or points at which interference is proposed must be specified.

*Purchase of undertaking.*

9. (1) The option of purchase given by Sub-section (1) of Section 7 of the Regulation shall first be exercisable on the expiration of 50 years 13, from the date of the notification of this licence and on the expiration of every subsequent period of 20 years, (and the terms 14 of such purchase shall be——————————————).

13 The periods after which an option to purchase arises may be less than 50 and 20 years, respectively.

14. The terms must not differ from those laid down in the Regulation unless the powers of Section 10 are invoked to modify or cancel them.

The percentage of the value to be determined in accordance with and for the purpose of Sub-section (1) of Section 7 of the Regulation of the lands, buildings, works, materials and plant of the licensee therein mentioned to be added under the second proviso of that Sub-section to such value on account of compulsory purchase shall be———per cent,

(2) In accordance with clause (*d*) (*ii*) of Sub-section (2) of Section 8 of the Regulation, it is hereby declared that the generating station to be used in connection with the undertaking $\frac{\text{shall}}{\text{shall not}}$ form part of the undertaking for the purpose of purchase under Section 5 or Section 7. 15.

15 The generating station or stations belonging to the licensees should ordinarily be included except where they form part of a traction undertaking previously authorized.

*Additions to, variations from, and exceptions from the Schedule to the Regulation.* 16

16 To be omitted if not required in any draft licence.

10. (1) In pursuance of clause (*f*) of Sub-section (2) of Section 3 of the Regulation, it is hereby expressly declared that Clause ________ of the Schedule to the Regulation shall for the purpose of incorporation in this licence be $\frac{\text{varied}}{\text{added to}}$

by the substitution of the following clause, namely :—17

17 The latter part of the clause may require modification according to the circumstances.

---

(2) In pursuance of clause (*f*) of Sub-section (2) of Section 3 of the Regulation, it is hereby expressly declared that clause (*s*) of the Schedule to the Regulation shall be exempted from incorporation in this licence.

NOTE.—In the preparation of a draft licence, the above model form may be varied, or added to, by the applicant so far as the Regulation and Rules admit.

Rules Nos. 9 to 13 inclusive, as to applications for licences, should be consulted. In drawing up a draft licence, the attention of the applicant is more particularly directed to the following Sections of the Regulation *viz.*, 3, 4, 7, 10, 11, 12, 22, 23, 24, 28, 52 and 58 ; the powers under Section 52 can only be conferred after the grant of the licence.

In the case of licences for bulk supply, see Clause IX of the Schedule and the proviso to clause (*f*) of Sub-section (2) of Section 3 of the Regulation, also clause (*b*) of Section 10 of the Regulation.

---

## ANNEXURE III.

*Model form of Accounts prescribed under the Travancore Electricity Regulation, 1097, for local authorities.*

[*See* Section 11 of the Regulation and Rule 32 (3) of the Rules.]

——————————Electric Licence.

The——————————*

* Enter designation of local authority.

*Year ending 31st Karkatakam 11....*

No. I.—Statement as to loans authorized for the purposes of the undertaking referred to in the above-mentioned licence prior to the end of the year for which accounts are made up.

| Amounts sanctioned and nature of loan. | Amount borrowed. | | | | Amount repaid. | | | | Amount sanctioned but not borrowed. |
|---|---|---|---|---|---|---|---|---|---|
| | At per cent. | At per cent. | At per cent. | Total. | At per cent. | At per cent. | At per cent. | Total. | |
| | | | | | | | | | |

## No. II.—Capital Account.

Dr. *For the year ending 31st Karkatakam 11...* Cr.

| — | Expenditure up to end of previous year. | Expended during the year. | Total expenditure to. | — | Receipts up to end of previous year. | Received during the year. | Total receipts to. |
|---|---|---|---|---|---|---|---|
| 1. To preliminary expenses (to be specified) | | | | 1. By amount raised by loans. | | | |
| 2. To lands, including law charges incidental to acquisition. | | | | 2. By value of lands belonging to authority appropriated for electrical purposes. | | | |
| 3. To value of lands appropriated for electrical purposes as per contra. | | | | 3. By value of surplus lands sold. | | | |
| 4. To buildings ... | | | | 4. By other receipts (to be specified). | | | |
| 5. To plant ... | | | | | | | |
| 6. To mains ... | | | | | | | |
| 7. To service connections ... | | | | | | | |
| 8. To transformers, etc. ... | | | | | | | |
| 9. To meters and fees for certifying under the Regulation. | | | | | | | |
| 10. To general stores ... | | | | | | | |
| 11. To transfer to sinking fund of value of lands sold as per contra. | | | | | | | |
| 12. To amount applied to the reduction of principal of borrowed money from value of (2), lands sold as per contra. | | | | | | | |
| 13. To special items (to be specified). | | | | | | | |
| Total expenditure... | | | | | | | |
| Balance of Capital Account... | | | | | | | |

## No. III.—Revenue Account.

Dr. *For the year ending 31st Karkatakom 11....* Cr.

| | | | | | |
|---|---|---|---|---|---|
| *A—Generation.* | | | | | |
| 1. To fuel ... ... ... | | | 1. By Balance from last account. Less bad debts written off. | | |
| 2. To oil, waste, water and engine-room stores. | | | 2. By sale of energy for lighting purposes. | | |
| 3. To proportion of salaries of engineers, superintendents and officers. | | | 3. By sale of energy for power purposes. | | |
| 4. To wages and gratuities ... | | | 4. By sale of energy under special contracts. | | |
| 5. To repairs and maintenance as follows— | | | 5. By public lighting ... ... | | |
| Buildings ... ... | | | 6. By rental of meters and other apparatus on consumer's premises. | | |
| Plant ... ... | | | 7. By rents receivable ... | | |
| To special items (to be specified) | | | 8. By service connection ... | | |
| 6. To other items (to be specified)... | | | 9. By miscellaneous receipt from consumers. | | |
| *B—Distribution.* | | | 10. By other items (to be specified) | | |
| 1. To proportion of salaries of engineers, superintendents and officers. | | | | | |
| 2. To wages and gratuities ... | | | | | |
| 3. To repairs, maintenance and renewals of mains. | | | | | |
| 4. To repairs, maintenance and renewals of transformers, etc. | | | | | |
| 5. To repairs, maintenance and renewals of meters, switches, cut-outs and other apparatus on consumer's premises. | | | | | |
| *C.—Public lamps.* | | | | | |
| 1. To attendance and repairs ... | | | | | |
| 2. To renewals, etc. ... | | | | | |
| *D.—Rents, rates and taxes.* | | | | | |
| 1. To rents payable .. ... | | | | | |
| 2. To rates and taxes ... ... | | | | | |
| *E.—Management expenses.* | | | | | |
| 1. To salaries, viz.— | | | | | |
| Engineer's Department ... | | | | | |
| Clerical Department ... | | | | | |
| 2. To general establishment charges ... ... | | | | | |
| *F.—Law charges.* | | | | | |
| To law expenses ... ... | | | | | |
| Carried over ... | | | | | |

## Dr. No. III.—Revenue Account.—(*Concld.*) Cr.

| | | | | | |
|---|---|---|---|---|---|
| Brought forward... | | | | | |
| *G.—Special charges.* | | | | | |
| To special items (to be specified) ... ... | | | | | |
| Total expenditure... | | | | | |
| Amount carried to net revenue account ... ... | | | | | |
| Balance carried to next account to provide for bad debts | | | | | |
| Total ... | | | Total ... | | |

## Dr. No. IV.—Net Revenue Account. Cr.

| | | | |
|---|---|---|---|
| 1. To interest on mortgage debt accrued due to date. | | 1. By balance from last account... | |
| 2. To instalments of principal of money borrowed. | | 2. By balance brought from revenue account (No. III). | |
| 3. To amount transferred to sinking fund where such fund is authorized. | | 3. By interest on money at deposit ... ... | |
| 4. To payments to reserve fund where such is authorized. | | | |
| 5. To sum applied to local rate... | | | |
| 6. To income-tax paid ... | | | |
| To balance carried forward... | | | |
| Total .. | | Total ... | |

## Dr. No. V.—Sinking Fund Account. Cr.

| | Stock. | | | Stock. | |
|---|---|---|---|---|---|
| 1. To amount paid for purchase of (nature of investment to be specified). | | | 1. By balance brought from last account. | | |
| 2. To stock sold during period of account. | | | 2. By amount brought from net revenue account. | | |
| 3. To amount of principal of borrowed money repaid. | | | 3. By interest on investment ... | | |
| 4. To amount of balance to next account. | | | 4. By value of lands transferred from account II. | | |
| | | | 5. By amount realized by sale of stock (nature of stock to be specified). | | |
| | | | 6. By stock purchased ... ... | | |
| Total ... | | | Total ... | | |

## Dr. No. VI.—Reserve Fund Account. Cr.

| | Stock | | | Stock | |
|---|---|---|---|---|---|
| 1. To amount paid for purchase of (nature of investment to be specified). | | | 1. By balance brought from last account. ... | | |
| 2. To stock sold ... ... | | | 2. By amount transferred from net revenue account. | | |
| 3. To sum transferred to revenue account. | | | 3. By stock purchased ... ... | | |
| 4. To amount of balance to next account. | | | 4. By amount realized by sale of stock (nature of stock to be specified). | | |
| Total ... | | | Total ... | | |

## Dr. No. VII.—General Balance Sheet. Cr.

| *Liabilities.* | | *Assets.* | |
|---|---|---|---|
| 1. To capital account: (Amount received as per account No. I). | | 1. By capital account: (Amount expended for works as per account No. II.) | |
| 2. To sundry creditors ... | | 2. By stores on hand ... | |
| 3. To net revenue account: Balance at credit thereof... | | 3. By sundry debtors for current supplied to end of the year ... | |
| 4. To sinking fund account ... | | 4. By other debtors ... | |
| 5. To reserve fund account ... | | 5. By securities as held (cost price) ... ... | |
| 6. To other items (to be specified)... | | 6. By other items (to be specified) ... | |
| | | 7. By cash with treasurer ... | |
| | | 8. By cash in hand ... | |
| Total ... | | Total ... | |

## No. VIII.—Statement of energy generated, sold, etc.

| Total energy generated in kilowatt-hours. | Kilowatt-hours sold | | | | | Kilowatt-hours used on works. | Kilowatt-hours not accounted for. | Total kilowatt-hours accounted for. | Kilowatts connected for public lamps. | Total consumers connected. | Total kilowatts connected.* | Plant installed, kilowatts. | Maximum supply demanded in kilowatts. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Public lamps. | By special contract.* | Consumers by meter for lighting purposes. | Consumers by meter for power purposes. | Total. | | | | | | | | |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) | (13) | (14) |

* Where the undertaking supplies power to tramways, the units sold to the tramway should be treated as sold by "special contract." In calculating the "total kilowatts connected," the kilowatts connected exclusive of the tramway should first be ascertained; then the kilowatts connected to the tramway system should be assumed to bear the same ratio to the units used on the tramway as the remaining kilowatts connected bear to their consumption.

## ANNEXURE IV.

*Model form of accounts prescribed under the Travancore Electricity Regulation, 1097, for Companies.*

(See Section 11 of the Regulation and Rule 32 (3) of the Rules.)

——————————Electric licence.

Enter designation of Company. The Company.

*For the year ending 31st Karkatakam 11....*

### No. I.—Statement of Share Capital appropriated for the purposes of the undertaking authorised by the above-mentioned licence at the end of the year.

| Description of capital. | Authorized by. | Number of shares issued. | Nominal amount of share. | Called up per share. | Total paid-up | Issued not paid-up. | Remaining unissued. | Total amount authorized. |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |

### No. II.—Statement of Loan Capital appropriated for purposes of the undertaking authorised by the above-mentioned licence at the end of the year.

| Description of loan. | Amounts borrowed. | | | | Remaining borrowing powers. | Total amount of borrowing powers. | |
|---|---|---|---|---|---|---|---|
| | At per cent. | At per cent. | At per cent. | Total. | | | |
| | | | | | | | |

Total Share Capital paid-up, see No. I ...
" Loan " Borrowed, see " II ...
Total Capital received ... ...

## No. III.—Capital Account.

Dr. *For the year ending 31st Karkatakom 11...* Cr.

| — | Expenditure up to end of previous year. | Expended during the year. | Total expenditure to. | — | Receipts up to end of previous year. | Received during the year. | Total receipts to. |
|---|---|---|---|---|---|---|---|
| 1. To preliminary expenses (to be specified) | | | | By ordinary shares of Do. | | | |
| 2. To lands including law charges incidental to acquisition ... | | | | By preference shares of | | | |
| 3. To buildings ... | | | | By debenture stock. | | | |
| 4. To plant ... | | | | By mortgages and bonds. | | | |
| 5. To mains ... | | | | By amounts received in anticipation of calls. | | | |
| 6. To service connections ... | | | | By other receipts (to be specified.) | | | |
| 7. To transformers, etc. ... | | | | | | | |
| 8. To meters, and fees for certifying under the Regulation | | | | | | | |
| 9. To general stores. | | | | | | | |
| 10. To special items (to be specified). | | | | | | | |
| Total expenditure. | | | | | | | |
| To balance of Capital Account. | | | | | | | |

## No. IV.—Revenue Account.

Dr. *For the year ending 31st Karkatakam 11....* Cr.

| | | | |
|---|---|---|---|
| *A.—Generation.* | | 1. By sale of energy for lighting purposes. | |
| 1. To fuel ... ... | | 2. By sale of energy for power purposes. | |
| 2. To oil, waste, water and engine-room stores ... ... | | 3. By sale of energy under special contracts. | |
| 3. To proportion of salaries of engineers, superintendents and officers. | | 4. By public lighting ... | |
| 4. To wages and gratuities ... | | 5. By rental of meters and other apparatus on consumer's premises ... | |
| 5. To repairs and maintenances as follows.— | | 6. By rents receivable ... | |
| Buildings ... ... | | 7. By transfer fees ... | |
| Plant ... ... | | 8. By service connections ... | |
| To special items (to be specified). | | 9. By miscellaneous receipts from consumers ... | |

**Dr.** **No. IV.—Revenue Account.** *(Concld.)* **Cr.**

| | | | | | |
|---|---|---|---|---|---|
| *B.—Distribution.* | | | 10. By other items (to be specified). | | |
| 1. To proportion of salaries of engineers, superintendents and officers. | | | | | |
| 2. To wages and gratuities ... | | | | | |
| 3. To repairs, maintenance and renewals of mains ... | | | | | |
| 4. To repairs, maintenance and renewals of transformers, etc. ... | | | | | |
| 5. To repairs, maintenance and renewals of meters, switches, cut-outs and other apparatus on consumer's premises. | | | | | |
| *C.—Public lamps.* | | | | | |
| 1. To attendance and repairs ... | | | | | |
| 2. To renewals, etc. ... | | | | | |
| *D.—Rents, rates and taxes.* | | | | | |
| 1. Rents payable ... | | | | | |
| 2. To rates and taxes ... | | | | | |
| *E.—Management expenses.* | | | | | |
| 1. To Directors' remuneration ... | | | | | |
| 2. To management ... | | | | | |
| 3. To general establishment charges ... | | | | | |
| 4. To Auditors of company ... | | | | | |
| 5. To Auditor appointed under the provisions of the Regulation ... | | | | | |
| *F.—Law charges.* | | | | | |
| To law expenses ... | | | | | |
| *G.—Depreciation.* | | | | | |
| 1. To depreciation in respect of leasehold works ... | | | | | |
| 2. To depreciation in respect of buildings ... | | | | | |
| 3. To depreciation of plant ... | | | | | |
| 4. To depreciation on mains ... | | | | | |
| 5. To depreciation on transformers, etc. ... | | | | | |
| 6. To depreciation on meters ... | | | | | |
| 7. To depreciation on general stores ... | | | | | |
| *G.—Depreciation.* | | | | | |
| 1. To depreciation in respect of any other items, to be specified ... | | | | | |
| *H.—Special charges.* | | | | | |
| To special items (to be specified) | | | | | |
| Total expenditure... | | | | | |
| Balance carried to net revenue ... | | | | | |

## Dr. No. V.—Net Revenue Account. Cr.

| Dr. | | Cr. | | |
|---|---|---|---|---|
| 1. To interest on debenture accrued due to date. | | 1. By balance from last account | | |
| 2. To interest on mortgages and bonds accrued due to date. | | Less dividend paid | | |
| 3. To interest on temporary loans accrued due to date. | | By amount carried to the Reserve Fund | | |
| 4. To dividend on preference stock... | | | | |
| 5. To income-tax paid ... | | 2. By balance brought from revenue account (No. IV.) | | |
| 6. To balance applicable to dividend on ordinary stock or shares. | | 3. By interest on money at deposit ... | | |

## Dr. No VI.—Reserve Fund Account. Cr.

| Dr. | | Cr. | |
|---|---|---|---|
| 1. Amount paid out (items to be specified) ... | | 1. By balance brought from last account ... | |
| 2. Amount of balance to next account | | 2. By amount brought from net revenue account ... | |
| | | 3. By interest on amount invested... | |
| | | Description of investments to be specified ... | |

## Dr. No. VII.—Depreciation Fund Account. Cr.

| Dr. | | Cr. | |
|---|---|---|---|
| To balance ... | | 1. By balance from last account ... | |
| | | 2. By interest on investments ... | |
| | | 3. By amount brought from revenue account see No. IV.—G. | |
| | | Description of investments to be specified ... | |

## Dr. No. VIII.—General Balance Sheet. Cr.

| *Liabilities.* | | *Assets.* | |
|---|---|---|---|
| 1. To capital account: amount received as per account No. III. | | 1. By capital account: amount expended for work as per Account No. III. | |
| 2. To sundry creditors due on construction of plant and machinery, fuel, stores, etc. | | 2. By stores on hand ... | |
| 3. To sundry creditors on open accounts ... | | 3. By sundry debtors ... | |
| 4. To net revenue account: balance at credit thereof. | | 4. By preliminary expenses awaiting adjustment. | |
| 5. To reserve fund account balance at credit thereof. | | 5. By securities as held (cost price)... | |
| 6. To depreciation fund account ... | | 6. By special items (to be specified)... | |
| 7. To special items (specified) ... | | 7. By cash at bankers. | |
| | | 8. By cash on hand ... | |
| Total | | Total | |

## No. IX —Statement of energy generated, sold, etc.

| Total energy generated in Kilowatt-hours. | Kilowatt-hours sold. | | | | | Kilowatt-hours used on works. | Kilowatt-hours not accounted for. | Total Kilowatt-hours accounted for. | Kilowatts connected for public lamps. | Total consumers connected. | Total Kilowatts connected.* | Plant installed, Kilowatts. | Maximum supply demanded in Kilowatts. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Public lamps. | By special contract. | Consumers by meter for lighting purposes. | Consumers by meter for power purposes. | Total. | | | | | | | | |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) | (13) | (14) |
| | | | | | | | | | | | | | |

* Where the undertaking supplies power to tramways, the units sold to the tramway should be treated as sold by "special contract." In calculating the "total kilowatts connected" the kilowatts connected exclusive of the tramway should first be ascertained; then the kilowatts connected to the tramway system should be assumed to bear the same ratio to the units used on the tramway as the remaining kilowatts connected bear to their consumption.

---

## ANNEXURE V.

*Form of requisition under Clause V.(4) of the Schedule to the Regulation.*

To

____________________________

__________ (name of licensee).

| | |
|---|---|
| In the case of six or more owners or occupiers. | We, the undersigned, being owners or occupiers of premises situated in or upon ________ street, within the "area of the supply" specified in the ________ license 11......, do, |
| In the case of local authority. The local authority's name will have to be inserted. | The Government of ______ (the * ______ of ______) being charged with public lighting of ______ street, within the area of supply specified in the ______ license, 11......, do |
| For such part of the street as may be specified. | hereby required (s) you, in pursuance of Clause V of the Schedule to the Travancore Electricity Regulation, 1097, to provide, within six months of the date of this requisition, distributing mains throughout the said street † |

Date at ________ }
The day of 11 . } ____________________

____________________

## ANNEXURE VI.

*For the requisition under Clause VI (5) of the Schedule to the Regulation.*

To

______________________

______________________(name of licensee).

[I] hereby require you, in accordance with Clause VI of the Schedule to the Travancore Electricity Regulation, 1097, within one month, or within such longer period as the Electric Inspector may allow, from the date of this requisition, to supply electrical energy for the premises__________ owned (occupied) by me, situate within the "area of supply" specified in the__________license, 11 , for the following :—

______________________

______________________

Wiring work will be carried out by______________________

Dated at__________ }
The day of 11 . } ______________________Signature.

NOTE.—Under Clause VI (1), 1st proviso, sub-head (*b*), of the Schedule to the Travancore Electricity Regulation, 1097, the licensee shall not be bound to comply with any such requisition unless and until the person making it if required by the licensee so to do, pays to the licensee the cost of so much of any service line as may be laid down or placed for the purpose of the supply upon the property in respect of which the requisition is made, and of so much of any service line as it may be necessary for the said purposes to lay down or place beyond one hundred foot from the licensee's distributing main, although not on that property.

## ANNEXURE VII.

*Form of order under Rule 4, Sub-rule (4)*

To

______________________

______________________(name of licensee or owner).

Whereas it appears that Rule ______________________has not been complied with by on______________________

† Period. you are hereby called upon to comply with the said Rule within † __________ unless in the meantime an appeal has been lodged in accordance with Sub-section (2) of Section 37 of the Regulation.

Dated at__________ }
The day of 11 . } __________Signature,
Electric Inspector.

Section 37 (2) of the Regulation enacts :

'In the absence of express provision to the contrary in this Regulation or any Rule thereunder, an appeal shall lie from the decision of an Electric Inspector to Our Government or, if Our Government so directs, to an Advisory Board'.

## ANNEXURE VIII.

*Form of annual return for mines.*

(*See* Rule 86.)

This form must be correctly filled up by the owner, agent or manager, and sent to the Electric Inspector not later than the 21st Chingam.

PART A.

Year ending——————11

Name of mine ————————

Situation of mine { Division ————— / Taluq —————

Anchal address of mine ————————

————————

Name and address of owner. { ———————— / ————————

Name of manager ————————

Name of under-manager ————————

*Form of annual return for oil-fields.*

(*See* Rule 86.)

This form must be correctly filled up by the owner agent or manager, and sent to the Electric Inspector not later than the first day of Kanni 11 .

PART A.

Year ending——————11 .

Name of oil-field ————————

Situation of oil-field { Division ————— / Taluq —————

————————

Anchal address of oil-field ————————

————————

Name and address of owner. { ———————— / ————————

Name of manager ————————

Name of under-manager ————————

*Form of Annual Return.*

PART B (*Mines.*)

Type and Horse-Power of Electrical Apparatus.

| | |
|---|---|
| 1.—System of Supply (whether continuous, current or alternating current). | |
| Voltage of Supply ... ... | |
| Periodicity (if alternating current) ... | |
| Source of Supply ... ... | |

| | | |
|---|---|---|
| 2.—Voltage at which current is used for—<br>Lighting ... ... ...<br>Power ... ... ... | | |
| 3.—Number and H. P. of each Motor installed on surface for—<br>Winding ... ... ...<br>Ventilation ... ... ...<br>Haulage ... ... ...<br>Washing, screening or other processes ...<br>Miscellaneous ... ...<br>Totals ... | Number. | H. P. of each Motor. |
| 4.—Number and H. P. of each Motor installed below ground for—<br>Haulage ... ... ...<br>Pumping ... ... ...<br>Portable Machinery ... ...<br>Miscellaneous ... ...<br>Totals ... | | |
| 5.—Grand Totals (addition of 3 and 4) ... ... | | |

PART B (*Oil-fields*).

Type and Horse-Power of Electrical Apparatus.

| | |
|---|---|
| 1.—System of Supply (whether continuous, current or alternating current).<br>Voltage of Supply ... ...<br>Periodicity (if alternating current) ...<br>Source of Supply ... ... | |
| 2.—Voltage at which current is used for—<br>Lighting ... ... ...<br>Power ... ... ... | |

3. Particulars of Motors, etc., in use on the field :—

(*a*) On wells.

| Number or other identifying mark of well. | Drilling or pumping. | H. P. of Motor. | Number of lamps and type. | Other electrical appliances. |
|---|---|---|---|---|

(*b*) Not on wells.

| H. P. of Motor. | Purpose for which used. | Identifying mark on map. |
|---|---|---|
| | | |

(c) Other electrical appliances, not included in (a) and (b), in use on the field.

| Appliances. | Size in K. W. | Purpose for which used. | Identifying mark on map. |
|---|---|---|---|
| | | | |

PART C (*Mines only*).

Particulars of Coal-cutting Machines, Conveyers and Electric Safety Lamps used during the year ended——————

## I.—Coal-Cutting Machines and Conveyers.

| Description. | Number driven by | | Statute Tons Cut by | | | | | | Number of Conveyers at Coal Face. |
|---|---|---|---|---|---|---|---|---|---|
| | | | Electricity | | | Compressed Air. | | | |
| | Electricity | Compressed Air | Coal. | Other mineral. | | Coal. | Other mineral. | | |
| | | | | Tons. | Description. | | Tons. | Description. | |
| Disc ... | | | | | | | | | |
| Bar ... | | | | | | | | | |
| Chain ... | | | | | | | | | |
| Percussive... | | | | | | | | | |
| Rotary Heading... | | | | | | | | | |

## II.—Electric Safety Lamps.

| Lamps in Use. (Name of lamps, and name of maker as marked on the lamp, should be given for each type of lamp in use.) | Number of each type on use. | Method of Locking. | | |
|---|---|---|---|---|
| | | Lead Rivet. | Magnetic. | Other (state the nature of the lock). |

## ANNEXURE IX.

*Log sheet for mines.*

[ *See* Rule 98 (4) ]

Daily log sheet for————————————11 .

1. Name of electrician in charge ————————————

2. Report as to :—

(a) Condition of the insulation of the system :—

(b) Specific defects of insulation (praticulars of each failure of apparatus should be given) :—

---

(c) Accidents or dangerous occurrence (including any cases of electric shock and any cases of open sparking in apparatus in use in places where Rule 99 applies)—

State which apparatus has been examined or tested and result.

(d) Examinations of apparatus as provided by Rule 98 :—

(i) Routine examinations as required by Rule 98 (3) (i) :

---

(ii) Special examinations as required by Rule 98 (3) (ii) :

---

3. Remarks :

---

Signed ______________ Electrician.

Examined by ______________ Manager.

NOTE.—This log sheet should be filled in as completely as possible. If, for instance, there are no defects of insulation to report, the word "none" should be written in the vacant space.

## *Log sheet for oil-fields.*

[ *See* Rule 98 (4). ]

Daily log sheet for ______________

1. Name of electrician in charge ______________
2. Report as to :—

(a) Condition of the insulation of the system :—

---

(b) Specific defects of insulation (particulars of each failure of apparatus should be given) : ______________

---

(c) Accidents or dangerous occurrence (including any cases of electric shock, and any cases of cpen sparking in apparatus in use in places where Rule 99 applies) :—

State which apparatus has been examined or tested and result.

(d) Examinations of apparatus as provided by Rule 98 :—

(i) Routine examinations as required by Rule 98 (3) (i) :—

---

(ii) Special examination as required by Rule 98 (3) (ii)

---

3. Remarks :—

---

Signed ______________ Electrician.

Examined by ______________ Manager.

NOTE.—This log sheet should be filled in as completely as possible. If, for instance, there are no defects of insulation to report the word "none" should be written in the vacant space.

---

## REGULATION III OF 1097 (*Land Assignment*).

### I. GOVERNMENT NOTIFICATION.

*(R. Dis. No. 905/29/Rev., dated 29th May 1929.)*

Under sanction of Her Highness the Maha Rani Regent it is hereby notified that the Rules issued under Section 7 of the Government Land Assignment Regulation, III of 1097, under date the 25th February 1923, for the assignment of Government lands, and published at pages 1373 to 1398 of the Land Revenue Department sheet of the Government Gazette dated the 13th March 1923, are further amended as follows:—

(1) *Rule 27.—Substitute the following for the existing Rule 28 and number the Rule as Rule 27*:

"27. Concessional assignments on the lines indicated in Rule 24, may be made, subject to a maximum of 3 acres to a single family by the Division Peishkar, in the case of families other than those belonging to the classes referred to in Rule 24, about whose poverty he is thoroughly satisfied. The grant of an area exceeding three acres to a single family shall not be made without the previous sanction of Government."

(2) *Rule 28.—Substitute the following for the existing Rule 27 and number the Rule as Rule 28*:

"28. There shall be inserted, in every grant of land under Rule 24, a condition to the effect that any alienation by the assignees of lands to persons other than those belonging to any of the depressed classes declared as such for purposes of these Rules, without the express sanction of Government, shall be void and that if any alienation is made in contravention of this condition, the land may be resumed by Government. All alienations of lands granted under Rule 27 shall also be void and a condition to this effect will be inserted in the Patta granted in such cases."

(3) *Form D.—Patta Form.*

*Substitute the following for the existing condition No. 5 at the foot of the Form*:

"5. In the case of concessional grants under Part V of the Puduval Rules, should the lands be alienated at any future date in contravention of the Rules contained in that Part, it is open to the Government to resume the land."— *T. G. G., dated 4-6-1929, Pt. I, P. 721.*

[ *See* Vol. V, Pp. 221 and 233. ]

II. *Lands for Ex-war Service men.*—In regard to the registry of land for Ex-war Service men, the Rules sanctioned were to be in force till the 24th November 1928. (*Vide* Vol. V, Pp. 253—255). By G. O. Dis. No. 1433/Revenue, dated 14th October 1929, the Government "direct that the period for the grant of lands under the Revised Rules dated the 21st October 1927 be further extended for one year from the date of publication of this order in the Government Gazette."— *T. G. G., dated 15-10-1929, Pt. I, P. 113.*

## DEVASWOM PROCLAMATION, 1097.

### RULES.

Regarding the Revision of Pathivus of Minor and Petty Devaswoms by a system of Endowments passed by the Government under Section 8 (3) of the Devaswom Proclamation.

*(Dated—April 1927.)*

With a view to enlist the active co-operation of the public in the administration of Devaswoms and to ensure a more efficient and better working of the Minor and Petty Devaswoms in the State, it has been decided to provide for the revision and enhancement of pathivus of these institutions by inaugurating a system of endowments. The following Rules are passed for the purpose under Section 8 (3) of the Devaswom Proclamation, dated the 12th April 1922.

1. The Government on behalf of the Devaswom will accept endowments in cash or in the shape of other moveable or immoveable property for the purpose of revising the pathivu in any of the Minor and Petty Devaswoms mentioned in the revised Schedule of Devaswoms published at pages 67 to 72 of the Gazette dated 28th October 1924 subject to the conditions contained in these Rules.

2. Any person or persons willing to contribute towards the revision of the pathivu of any Minor or Petty Devaswom should make an offer in writing to that effect to the Devaswom Commissioner specifying the amount of money and the particulars and value of other property he is prepared to contribute and the nature of the additional pathivu he desires to be introduced in the Devaswom.

3. Every such offer will be considerd on its merits by the Devaswom Commissioner with special reference to:—

(*a*) the need for such revision of the pathivu of the Devaswom;

(*b*) the importance of the Devaswom;

(c) its usefulness to the public; and

(d) the amount of the contribution offered.

4. Subject to the provisions specified in paragraph (3) above, the offers will be dealt with in the order of their priority.

5. The pathivu of the Minor or Petty Devaswom will, as far as possible, be revised on the lines suggested by the contributor provided such revision does not affect in any way the existing custom or usage of that Devaswom.

6. Cash or other property contributed for the revision of the pathivu of any particular Devaswom must be handed over to the Devaswom Commissioner. In the case of immoveable property a conveyance thereof should be made in favour of the Dewan of Travancore. If it is cash the Devaswom Commissioner will invest it in the name of the Dewan of Travancore. In the case of other moveable property it will be converted into cash and invested in the same manner as cash endowment. The investments will be in Pronotes of the Government of India or of the Government of Travancore or in the Sirkar Savings Banks as the Devaswom Commissioner may deem advisable.

7. The contribution made under Rule 6 above will, when necessary for the revision of the pathivu proposed, be supplemented by the grant of a lump amount not exceeding the amount of such contribution, from the Devaswom fund that may annually be specially set apart in the Devaswom fund Budget for contribution for endowments to Minor and Petty Devaswoms.

8. The contribution made under Rule 6 and the amount that may be contributed from the Devaswom fund under Rule 7 shall together constitute the endowment for the revision of the pathivu.

9. No such endowment shall be constituted unless the Devaswom Commissioner is satisfied that the income from the fund will be sufficient for the revision of the pathivu proposed.

10. When at any time it is found that the income from the endowment is inadequate to meet the expenses connected with the revised pathivu for which the endowment was constituted, the Devaswom Commissioner is competent to direct any modification in the pathivu so as to keep it within such income. But the original donor or donors or any other person or persons if willing, may make up the deficiency by a fresh contribution towards the endowment. No additional amount will be contributed from the Devaswom Fund for such purpose.

11. Money or other property contributed by a donor or donors and constituted or incorporated into an endowment under these Rules shall vest

absolutely in the Government on behalf of the Devaswom and shall at no time and under no circumstances be liable to be returned to the donor or donors.

12. The Devaswom Commissioner reserves to himself the absolute right of rejecting or accepting any contribution offered under these Rules.—

*T. G. G., dated 19-4-1927, Pt. I, P. 687.*

---

## REGULATION II OF 1098 (*Destruction of Records*).

---

### I. RULES.

The following Rules are issued under Section 2 (*c*) of Regulation II of 1098 for the destruction of useless records in the possession of the Maramat Department.

(*R. Dis. No. 1637 / 29/P. W., dated 13th June 1929.*) †

1. Three lists prescribing the periods for the retention and destruction of the records of the Maramat Department are appended to these Rules. The first deals with the records of the Maramat Engineer's Office, the second with those of the Maramat Circle Offices and the third with those of the Section Offices.

2. The Maramat Engineer shall be competent to sanction the destruction of such records as are useless and which have been in existence for the required number of years as specified in the lists appended to these Rules.

3. Every Maramat Circle Officer shall early in Kanni each year submit to the Maramat Engineer for sanction a list of the records of the Circle and of the Section Offices under him, which may, in his opinion, be destroyed, regard being had to the periods prescribed for their preservation.

4. Simultaneously the Maramat Engineer shall cause to be prepared a list of the records that are due for destruction belonging to his office also.

5. The Maramat Engineer shall then go through these lists and sanction the destruction of such of the records as are in his opinion undoubtedly useless. He may order the retention of any paper or papers for any longer period or permanently.

6. Records of works valuable from a professional point of view should on no account be destroyed.

7. A consolidated list of records sanctioned to be destroyed each year shall be published in three successive issues of the Government Gazette, after which they may be destroyed.

---

† *T. G. G., dated 23-7-1929, Pt. I, Pp. 849—852.*

8. The records shall be destroyed by burning and not disposed of in any other manner.

9. The records intended for destruction should first of all be scrutinised by the Maramat Circle Officer so far as the Circle and Section Offices are concerned and by the Manager as regards the Maramat Engineer's Office, so as to see whether they are as mentioned in the sanctioned list. The records so scrutinised shall be carefully sorted out and kept under lock and key till the date fixed for their destruction, lest other papers get mingled with them.

10. On the date fixed, these records of the Circle and the subordinate offices, shall be burnt in the presence of the Maramat Circle Officer and Section Officer respectively and those of the Maramat Engineer's Office in the presence of the Head Clerk and the Record Keeper.

11. Each Office shall maintain a permanent register of the records destroyed showing the sanction, date of destruction etc.

MARAMAT ENGINEER'S OFFICE.

| *No.* | *Particulars.* | | *Period of retention.* | |
|---|---|---|---|---|
| | *A.* ACCOUNTS. | | | |
| 1. | Acquittance roll for Establishment pay and T. A. | ... | 35 complete account years. | |
| 2. | Service books | ... | To be disposed of with pension application or destroyed six months after death or dismissal of the officers. | |
| 3. | Travelling Journals of officers | ... | 3 complete account years. | |
| 4. | Register of undisbursed salaries | ... | 3 | Do. |
| 5. | Register of T. A. bills | ... | 3 | Do. |
| 6. | Leave Register | ... | 3 | Do. |
| 7. | Register of liabilities and Court attachment | ... | 35 | Do. |
| 8. | Anamath Register | ... | 3 | Do. |
| 9. | Contingent Register | ... | 3 | Do. |
| 10. | Contingent vouchers not sent to the Account Officer | ... | 4 | Do. |
| 11. | Registers relating to stationery articles | ... | 6 | Do. |
| 12. | Budgets | ... | 10 | Do. |
| 13. | Application for re-appropriation of budget grants | ... | 1 | Do. |
| 14. | Statements of expenditure | ... | 3 | Do. |
| 15. | Progress reports on works | ... | 1 year after the C. R. for the work is sent. | |
| 16. | Register of survey reports | ... | 3 complete account years. | |
| 17. | Do. Anchal and Postal Stamps | ... | 3 | Do. |
| 18. | Statements and periodical returns | ... | 3 | Do. |

### *A.* ACCOUNTS.—(*Concld.*)

| *No.* | *Particulars.* | | *Period of retention.* |
|---|---|---|---|
| 19. | Attendance register | ... | 35 complete account years. |
| 20. | Register of works (Major and Minor) | ... | 5 years after the C. Rs. for the works are sent. |
| 21. | Register of T & P and furniture | ... | Permanent. |
| 22. | Do. of revenue | ... | 15 complete account years. |
| 23. | Do. of security deposits by subordinates | ... | Do. |
| 24. | Register of security deposits by contractors | ... | To be destroyed when the work is over and after all liabilities are cleared. |
| 25. | Cash books | ... | 20 years. |
| 26. | Register of rent on buildings | ... | Permanent. |
| 27. | Schedule of expenditure on Maramat works | ... | 5 complete account years. |
| 28. | Office Order books | ... | Permanent. |

### *B.* CORRESPONDENCE.

| | | | |
|---|---|---|---|
| 1. | Index register of records | ... | Permanent. |
| 2. | Register of records destroyed | ... | Do. |
| 3. | Gazettes and Almanacs | ... | Do. |
| 4. | Printed Administration reports of State and Maramat Department | ... | Do. |
| 5. | Register of letters received | ... | 20 years. |
| 6. | Do. despatched | ... | Do. |
| 7. | Inspection notes of the Maramat Engineer | ... | 10 years. |
| 8. | Do. of subordinate officers | ... | 3 years. |
| 9. | Work files | ... | 5 years after the C. Rs. for the work is submitted. |
| 10. | Personal files | ... | To be destroyed six months after the severance of the connection of an officer from the service by retirement or otherwise. |
| 11. | Miscellaneous files | ... | 3 years. |
| 12. | Applications for appointments | ... | 2 years. |
| 13. | Administration Reports of the Devaswoms and correspondence relating thereto | ... | 3 years. |
| 14. | Correspondence relating to the subjects in S. M. P. Assembly | ... | 20 years. |
| 15. | Do. forms and stationery | ... | 5 years. |
| 16. | List of unanswered references | ... | 1 year. |

### B. CORRESPONDENCE.—(*Concld.*)

| No. | Particulars. | | Period of retention. | |
|---|---|---|---|---|
| 17. | Local delivery book | ... | 1 year. | |
| 18. | Files of Government and Departmental circulars | ... | Permanent. | |
| 19. | Files *re* maintenance works | ... | 5 complete account years. | |
| 20. | Circuit diaries of Maramat Officers | ... | 2 | Do. |
| 21. | B. Form statements of sanctioned estimates | ... | 3 | Do. |
| 22. | M. R. statements and correspondence | ... | 3 | Do. |
| 23. | Papers *re* establishment, promotions, transfers etc. | ... | | Do. |
| 24. | Pension papers | ... | 1 year after the pension has been granted. | |

### C. DRAWINGS AND ESTIMATES.

| | | | |
|---|---|---|---|
| 1. | Survey maps and plans | ... | Permanent. |
| 2. | Register of Do. | ... | Do. |
| 3. | Standard or type designs | ... | Do. |
| 4. | Register of buildings | ... | Do. |
| 5. | Plans of important buildings | ... | Do. |
| 6. | Register of books | ... | Do. |
| 7. | Do. of drawing and mathematical instruments | ... | Do. |
| 8. | Do. of estimates sanctioned | ... | 20 years. |

## MARAMAT CIRCLE OFFICES.

### A. ACCOUNTS.

| | | | | |
|---|---|---|---|---|
| 1. | Acquittance rolls | ... | 35 complete account years. | |
| 2. | Leave registers | ... | 3 | Do. |
| 3. | Attendance registers | ... | 35 | Do. |
| 4. | Service books | ... | To be disposed with pension application or destroyed six months after the death or dismissal of the Officer. | |
| 5. | Register of service books | ... | To be renewed whenever necessary or convenient. | |
| 6. | Contingent registers | ... | 3 complete account years. | |
| 7. | Register of undisbursed salaries | ... | 3 | Do. |
| 8. | Register of revenue | ... | 15 | Do. |
| 9. | Do. of court attachment | ... | 35 | Do. |
| 10. | Do. of rented buildings | ... | 35 | Do. |
| 11. | Do. of miscellaneous receipts | ... | 10 | Do. |
| 12. | Do. of furniture | ... | Permanent. | |
| 13. | Daily reports | ... | 1 complete account year. | |
| 14. | Do. register | ... | 1 | Do. |

## *A.* ACCOUNTS.—(*Concld.*)

| No. | Particulars. | | Period of retention. |
|---|---|---|---|
| 15. | Cash books | ... | 20 complete account years. |
| 16. | Work ledger | ... | 5 years after C. R. is sent to Maramat Engineer. |
| 17. | Measurement books | ... | 20 complete account years. |
| 18. | Register of Do. | ... | 20 Do. |
| 19. | Register of N. M. rolls received and issued | ... | 5 Do. |
| 20. | Contractors ledger | ... | Permanent. |
| 21. | Anamath Register | ... | 3 years. |
| 22. | Survey report register | ... | 3 complete account years. |
| 23. | Register of tools and plant | ... | Permanent. |
| 24. | Indents | ... | 3 complete account years after C. R. is sent. |
| 25. | Register of advances to labourers | ... | Permanent. |
| 26. | Register of unclaimed wages | ... | 3 complete account years. |
| 27. | Progress reports on works | ... | 1 year after the C. R. for the work is sent. |
| 28. | Schedules of expenditure | ... | 3 complete account years. |
| 29. | Register of security deposits | ... | 15 Do. |
| 30 | Register of works | ... | 5 years after C. R. was sent. |

## *B.* CORRESPONDENCE.

| | | | |
|---|---|---|---|
| 1. | Inspection reports of Section Officers | ... | 10 complete account years. |
| 2. | Petitions (files) | ... | 3 Do. |
| 3. | Outward registers | ... | 30 Do. |
| 4. | Inward Do. | ... | 30 Do. |
| 5. | Register of leases | ... | Permanent. |
| 6. | Do. Inventories in Sirkar Bungalows, Palaces etc. | ... | Do. |
| 7. | Do. of records destroyed | ... | Do. |
| 8. | Works files | ... | 5 years after the C. R. for the work is submitted. |
| 9. | Correspondence *re* form and stationery | ... | 5 years. |
| 10. | Departmental circulars | ... | Permanent. |
| 11. | Register of anchal and postal stamps | ... | 5 complete account years. |
| 12. | Files *re* maintenance works | ... | 5 Do. |
| 13. | Circuit diaries | ... | 2 Do. |
| 14. | Papers relating to pension | ... | 1 year after pension has been granted. |

## *C.* DRAWING AND ESTIMATES.

| | | | |
|---|---|---|---|
| 1. | Agreement registers | ... | 10 complete account years. |
| 2. | Register of sanctioned estimates | ... | 10 Do. |

C. DRAWING AND ESTIMATES—(*Concld.*)

| *No.* | *Particulars.* | | *Period of retention.* |
|---|---|---|---|
| 3. | Register of estimates submitted to Maramat Engineer | ... | 10 complete account years. |
| 4. | Register of plans | ... | Permanent. |
| 5. | Do. of books drawing instruments etc. | ... | Do. |
| 6. | Do. of buildings | ... | Do. |

## SECTION OFFICES.

### A. ACCOUNT.

| | | | |
|---|---|---|---|
| 1. | Acquittance roll | ... | 35 complete account years. |
| 2. | Leave registers | ... | 3 Do. |
| 3. | Attendance registers | ... | 35 Do. |
| 4. | Service books | ... | To be disposed of with pension application. |
| 5. | Contingent register | ... | 3 complete account years. |
| 6. | Register of furniture | ... | Permanent. |
| 7. | Daily report | ... | 1 complete account year. |
| 8. | Work ledger | ... | 5 years after C. R. is sent. |
| 9. | Measurement books | ... | 20 complete account years. |
| 10. | Register of nominal rolls | ... | 5 Do. |
| 11. | Register of tools and plant | ... | Permanent. |

### B. CORRESPONDENCE.

| | | | |
|---|---|---|---|
| 1. | Inward register | ... | 30 years. |
| 2. | Outward | ... | Do. |
| 3. | Work files | ... | 5 years after C. R. is sent. |
| 4. | Correspondence *re* form and stationery | ... | 5 years. |
| 5. | Departmental circulars | ... | Permanent. |
| 6. | Register of anchal service stamps | ... | 5 complete account years. |
| 7. | Files *re* maintenance works | ... | 5 Do. |
| 8. | Papers relating to pension | ... | 1 year after pension has been granted. |

### C. DRAWING AND ESTIMATES.

| | | | |
|---|---|---|---|
| 1. | Register of sanctioned estimates | ... | 10 complete account years. |
| 2. | Do. of plans | ... | Permanent. |
| 3. | Do. of buildings | ... | Do. |
| 4. | Do. of drawing instruments etc. | ... | Do. |

## II. GOVERNMENT NOTIFICATION.

*(No. R. Dis. 1744/29/Rev., dated 13th November 1929.)*

Under sanction of Her Highness the Maha Rani Regent, it is hereby notified that the following is added as Item No. 137 in Schedule II of Appendix II to the Rules for the Destruction of Records in the Divisional, Taluk and Village Offices of the Land Revenue Department, published with Notification, No. 9849/L. R., dated the 28th October 1911 at Pages 5 to 11 of the Government Gazette dated the 2nd January 1912.

| *Nature of Records.* | *When to be destroyed.* |
| --- | --- |
| Stamp Vendor's Nalvazhi book. | After twelve years. |

*T. G. G., dated 17-12-1929, Pt. I, P. 275.*

(*See* Vol. V, Page 464).

---

# REGULATION VIII OF 1100 (*Civil Procedure Code*).

---

## I. GOVERNMENT NOTIFICATIONS.

(1)

*(Dated 10th June 1895).*

Under Section 8 of Regulation II of 1070, it is hereby notified that His Highness the Rajah of Cochin may sue and shall be sued in the Civil Courts of this State in the name of his Dewan.

This Notification shall have retrospective effect from the 28th Kanni 1067.

---

(2)

*(R. Dis. No. 1405 / 28/Judicial, dated 2nd June 1928).*

In supersession of Notification No. J. 4026, dated the 1st May 1920, published at page 466 of Part I of the Government Gazette, dated the 4th May 1920, it is hereby notified that, by virtue of the powers conferred by Order XXVII, Rules 1 and 2 of the Code of Civil Procedure, Regulation VIII of 1100, as amended by Regulation X of 1100, all Heads of Departments, all

Heads of Offices working immediately under and directly responsible to Government, and the Division Peishkars and the Commissioner, Devicolam, are hereby authorised to act for Government in suits in Civil Courts relating to any transaction falling within the ordinary duties of their respective offices, and are further authorised to sign and verify pleadings and do and perform all other acts that a recognised Agent in any Civil Suit may do and perform.

*T. G. G., dated 5-6-1928, Pt. I, P. 695*

## II. CIVIL CIRCULARS.

(1)

It has come to the notice of the High Court that in several of the subordinate Courts, fresh registration fees are not levied in suits and appeals relating to immoveable properties on their restoration to file in consequence of an order made by the Court which decided the suit or appeal or in consequence of an order of remand as required by paragraph 3 of Rule 790 of the Civil Courts' Guide. The attention of all the subordinate Courts is therefore invited to the Rule in question and the impropriety of the omission to levy fresh registration fees in such cases and they are hereby directed to see that in future the provisions of the said Rule are strictly complied with and fresh registration fees as per paragraphs 1 and 2 of the said Rule are levied in all such cases on restoration and fresh registration yadasts sent to the respective Sub-Registrars after re-disposal and that the necessary fees are levied in all such pending cases as well.— *Civil Cir.* No. 1 of 1103.

(2)

It has come to the notice of the High Court that there is considerable remissness on the part of the presiding officers of several of the subordinate Courts in the matter of framing issues for trial. The provions of Rule 64 of the Civil Courts' Guide laying down the procedure which shall ordinarily be followed by the Courts in settling issues in original suits and other proceedings of a similar nature under special enactments are very rarely found complied with. It is also sometimes found that the pleadings are prepared not by the presiding officer but by the Vakils appearing in the case—a practice which is

in direct contravention of the Rule referred to above. The High Court therefore invite the attention of the subordinate judiciary to Rule 64 of the Civil Courts' Guide and direct that the provisions of that Rule shall be strictly adhered to in future.— *Civil Cir.* **No. 2 of 1103.**

---

(3)

It has come to the notice of the High Court that the provisions of Rule 776 of the Civil Courts' Guide which directs that copies of a document signed by the presiding officer of a Court prepared either for delivery to the parties or their Vakils or for preservation in the office, shall mention the name of the signatory and his official designation and that signatures of presiding officers appearing in the records shall be legible and the provisions of High Court Proceedings dated 19th Kumbhom 1075 enjoining legibility of signatures of all Judges and Munsiffs and Magistrates are not being acted up to by Judicial Officers.

The High Court therefore invite the attention of the subordinate Civil Courts to the Rule and Proceedings above referred to and enjoin on them strict compliance in future with the provisions aforesaid.—

*Civil Cir.* **No. 3 of 1103.**

---

# APPENDIX B.

## CASE LAW.

### REVENUE SETTLEMENT PROCLAMATION, 1061.

**1.** Thanathuchitta lands assessed to the revenue as on Pandarapattom lands at the Revenue Settlement are within the prohibition in Clause 31 of the Proclamation of 14th Kumbhom 1061, and the tax fixed on them is not enhanceable for thirty years from date of the Settlement either by altering the Tharam or otherwise to the prejudice of another who has accepted title of the lands independent of the will of the Government (F. B.).—

**43 T. L. R.,** ***58*** **(=17 T. L. J.,** ***571.*****)**

**2.** Neither the provisions of Section 19 of the Settlement Proclamation of 1061 nor the Government Notification of 20th Makarom 1081 would apply to Thiruppuvarom specified in the Pattah.

The provision enabling payment in money of one-half at the original commutation rate of six Chuckrams per Parah as enjoined in the Proclamation and the provision sanctioning payment of the remaining one-half at eleven Chuckrams per Parah according to the Government Notification referred to related only to the Government demand which would connote the balance payable to the Sirkar Offices after deductions towards Thiruppuvarom and other dues.—

**19 T. L. J.,** ***1394.***

**3.** See also—

Regn. I of 1071.—**18 T. L. J.,** ***47,***
**44 T. L. R.,** ***32***
**(=18 T. L. J.,** ***471.*****)**
**19 T. L. J.,** ***345.***

W

pre

### VIRUTHI PROCLAMATION, 1061.

Where registry is granted by the Settlement authorities of Erayali land, in the joint names of persons, all of them become co-owners of the property.

Where one of the co-owners was holding the property for himself before and after the registry, to the exclusion of the other, and such exclusive possession has continued, after the party who was excluded, acquired title to the property for more than twelve years, prior to the date of suit to establish title and obtain possession:

*Held,*—The rights of the latter were lost by adverse possession.

The grant of joint Pattah will not alter the nature of the exclusive possession of one of the parties, and the ordinary rule, that the possession of land, under the common title of a co-owner will not be presumed to be adverse to the others will be sufficiently rebutted by proof of exclusive possession.— **18 T. L. J.,** ***48.***

### REGULATION V OF 1067 *(Criminal Procedure Code).*

#### Section 4 (*a*).

An information of an offence laid under Section 41 of the Police Regulation is quite different to a Police Report under Section 170, Criminal Procedure Code. The report therefore must be regarded as equivalent to a complaint and hence Section 224, Criminal Procedure Code, is applicable. Section 224 applies only to summonses issued on a complaint.

The word "Report" in Section 4 (*a*) is used in the technical sense of a report as

contemplated by the Code, and does not include reports which may be made under powers other than those given by the Code.

No express powers to arrest without warrant are given by the Police Regulation, though Section 41 of that Regulation allows a Police Officer to lay an information before a Magistrate.— **43 T. L. R.,** *379* (**=17 T. L. J.,** *816*).

### Section 12-A.

It is a well-recognised principle of the Criminal Procedure Code that the judgment must be delivered by the Magistrate who has heard the whole case. There is nothing in Section 12-A which provides for the constitution of a Bench of Magistrates to show that there was an intention to deviate from this general principle. On the other hand, the expression "Bench" in that Section seems to be intended to mean the same set of Magistrates.

Section 261 seems inapplicable. That Section is intended to provide for cases where a Magistrate ceases to exercise jurisdiction by transfer or otherwise. It cannot be said that when a Bench Magistrate fails to attend a sitting of the Bench, he ceases to exercise jurisdiction.

The conviction and sentence in the case cannot be sustained as none of the Magistrates who decided the case was present throughout the trial (F. B.).— **44 T. T. R.,** *158*.

### Section 12-B.

1. Under the Rules framed under Section 12-B, matters relating to adjournment relate to conduct of proceedings and would fall under the category of functions exercisable by a Magistrate when sitting alone within the meaning of Rule 6. In this view the order of adjournment passed by the chairman in a case on the day on which it was taken up must be considered to have concluded the proceedings of the day and the direction of the other judges to the contrary in the matter and the order of acquittal entered by them are irregular and *ultra vires*.

Under Rule 7, a judgment signed by two Bench Magistrates alone cannot be considered a judgment of the Bench. Unless the Magistrates concerned had been invested with jurisdiction to act as such individually, independently and irrespective of the right to constitute a Bench of Magistrates, the judgment recorded by two members of the Bench could not be deemed to have any binding force. The signing of such judgment by the official chairman later on cannot validate such judgment.— **17 T. L. J.,** *402*.

2. One Head Constable presented before the Bench Court Exhibit B which contained the allegation that the petitioner before the High Court had used against another individual foul and abusive words in the hearing of many men and women in a public place. Other particulars of the offence also were mentioned in it. It ended with a request that the witnesses mentioned therein and the offender may be brought before the Court and proper steps taken as required under the law. It was signed by the Head Constable and countersigned by the Police Inspector. *Held*,—Exhibit B should be treated as a Police Report and the Bench Court should act upon it under Rule 2 issued under Section 12-B. The term 'Police Charge-Sheet' in Rule 2 must include a Police Report.— **17 T. L. J.,** *908*.

3. An information laid before a Magistrate by a Police-Officer in a non-cognisable case cannot be treated as a Police charge sheet for the purpose of Rule 2 of the Rules framed under Section 12-B. The Police charge sheet referred to in the Rule is the report of a Police-Officer under Section 155 in cognisable cases (F. B.)— **44 T. L. R.,** *304* (**=18 T. L. J.,** *1075*).

### Section 19.

Section 53 of the Penal Code read with Section 19 of the Criminal Procedure Code does not make it imperative on the Magistrate to record a sentence of imprisonment in every case of default of payment of fine.— **4 S. D.,** *401*.

### Section 20.

To award life imprisonment to an accused for an offence under Section 301 of the Penal Code, in continuation of five years hard labour for an offence under Section 307, is not to go against Proviso (*a*) to Section 20 of the Criminal Procedure Code.

For the purpose of Proviso (*a*), life imprisonment cannot be treated as a punishment for any definite period, though for certain purposes of the Penal Code, life imprisonment will mean twenty years' imprisonment, and for the purpose of Prison Rules, it means fourteen years, under Central Prison Rules, No. 203 (F. B.).—

**18 T. L. J.**, *621*.

### Section 26.

The object of Section 26 is to ensure that information obtained is not wilfully withheld by those whose position in the locality renders them liable to it. Its provisions are evidently not intended to be used for the purpose of vexation.

The provisions of the Section are considered to be not punitive in themselves but are provided to facilitate obtaining information as to the commission of an offence and thereby enable steps being taken promptly in the investigation of the same.

The expression "owner or occupier of land" in Section 26 (*d*) refers to owners or occupants of land in proprietary estates and would not cover cases of mere householders in the village. The duty is imposed on owners and occupiers of land and their agents on the ground that no officers of Government are had for the collection of revenue, as in the case of Jenmom tracts or Edavagais.

Penal statutes should be construed strictly and no case should be held to be within their reach, unless they are within the spirit and the letter of the law. If two interpretations are possible, that in favour of the person against whom the penalty is sought to be enforced must be preferred.

And judicial construction previously made will have an important bearing, for, if an act or omission has been considered all along to be not amounting to an offence, it would be undesirable and improper to treat it as an offence and punish the person responsible therefor on that basis.—

**45 T. L. R.**, *460*.

### Section 57.

See under Section 182.—**19 T. L. J.**, *30*.

### Section 90.

**1.** When a Magistrate, during the course of the proceedings under Section 90 orders any person to custody as in his opinion an immediate breach of the peace cannot otherwise be averted, it is not open to the Sessions Court to release the person, as that act will frustrate the very object for which the person is ordered to custody.—

**17 T. L J.**, *906*.

**2.** Where there is a *bona fide* dispute as to the right to the possession of the land between two rival parties giving rise to a likelihood of breach of the peace, the proper procedure is to institute proceedings under Section 128 and to decide the question of possession on the evidence and not to proceed to take action under Section 90, unless it appears that the likelihood of breach of the peace is imminent. The object of Section 90 which is intended only to the security of the public peace should not be confounded with the proceedings required to be taken under Section 128.— **18 T. L. J.**, *468*.

**3.** See also under Sec. 222—

**17 T. L. J.**, *899*.

" Sec. 128.—**18 T. L. J.**, *342*.

**18 T. L. J.**, *940*.

### Section 102.

See under Sec. 222.—**17 T. L. J.**, *899*.

### Section 127.

If it is found that a man is doing that which he is legally entitled to do and his neighbour chooses to take offence thereat

and to create disturbance in consequence, the duty of the Magistrate is not to deprive the first of the exercise of his legal right but to restrain the second from illegally interfering with that exercise of legal right.

Section 127 clearly lays down that an order under the Section can be directed to the public generally only when frequenting or visiting a particular place.—

**19 T. L. J.,** *1042.*

### Section 128.

**1.** The word "possession" in Section 128 cannot mean only actual or bodily possession. The proper construction of the Section is that "by actual possession is meant the possession of a master by a servant, the possession of a landlord by his immediate tenant, the person who pays the rent to him, the possession of the person who has the property in the land by the usufructuary."

Where the first party sets up joint possession and adds that the opposite party is preparing to use force for the purpose of converting such joint possession into exclusive possession, the Magistrate is not justified in holding at once, on such admission, that the second party is in actual possession and to drop further proceedings at once.

An order of attachment passed by the lower Court cannot be lightly interfered with in revision, the Magistrate being a far better judge of emergency than a Revision Court.— **17 T. L. J.,** *398.*

**2.** Section 128 (4) does not enjoin the Magistrate to set out in detail in his final order how the whole proceedings were inaugurated by him. Such an omission would be a defect in the preliminary order, but it is neither a defect nor an irregularity in the final order.

Under Clause (4) of Section 128, the Magistrate has to decide the fact of possession at the date of order requiring the parties to put in their written statements without reference to the merits of the claims of the parties to the right to possess the subject o dispute.— **17 T. L. J.,** *408.*

**3.** The only thing necessary for accrual of jurisdiction for the Magistrate under Section 128 is that he should be satisfied in his mind on some materials before him which are not merely imaginary that there is fear of a breach of the peace with regard to some immovable property between the parties.

The Magistrate is not bound to act on all that is stated in the Police report before him.— **17 T. L. J.,** *424.*

**4.** The proviso to Clause (4) of Section 128 simply means that even where a person cannot show that he was in actual possession on the date of the order, if he can prove that he was forcibly and wrongfully dispossessed within two months from the date of the order, his prior possession might be treated for the purposes of the Section as actual possession on the date of the order.—

**18 T. L. J.,** *35.*

**5.** In the nature of the peremptory provisions of Section 128, it has to be held that it is not within the competency of a Magistrate to refuse to take action under that Section and proceed under the permissive provisions of Section 90 in case he finds a breach of the peace likely by reason of disputes relating to immovable property. Section 90 is seen to deal with all cases of likelihood of breach of the peace irrespective of the nature of the dispute which causes the same, while Section 128 relates to such cases of a particular species, namely, those where the breach of the peace in question is apprehended as a result of disputes regarding immovable property. It would be proper to hold that, if the conditions laid down in Section 128 are made out to exist, action under that Section alone has to be taken.

The High Court's power of revision under Section 330 are very wide and, as representing the unlimited judicial power of the Sovereign of the State, over the subordinate Courts, its powers to cancel the errors of the lower Courts can only be limited by statute law, and no such power can be held

to have been taken away by implication by statute law because no such powers have been expressly conferred by the statute.—

**18 T. L. J.,** *342.*

6. To justify inauguration of proceedings under Section 128 it is not necessary to see whether the breach of the peace is *imminent* as opposed to *probable*. The Magistrate is entitled to take action under the Section, where he is satisfied that there are grounds for holding that a breach of the peace is likely. It would be improper to import into the language of the Section further limitation as to the nature of the apprehension.

The sufficiency or reliability of the information is not one which could be enquired into by the Revisional Court.—

**18 T. L. J.,** *788.*

7. The communication of the District Magistrate to the Police, in the case, that possession was with one of the rival parties, was a finding which could be contained only in a judicial order passed under Section 128. The substance rather than the form of the order had to be looked into. It was in fact a proceeding of a Magistrate, and even if it were not regarded as a judicial proceeding, it was still liable to revision.

Where two things exist, namely, a *bona fide* dispute as to the possession of land and a consequent danger of a breach of the peace, the duty of the Magistrate is to start proceedings under Section 128, as only in this way can the question of actual possession be determined. An adjudication under Section 90 can obviously not be of great help, for the trouble consists in the attempt of the person who is not in possession to take possession. If proceedings are taken under Section 90, they should be taken against this party, but how can it be assumed which party is in possession as this is a matter which ordinarily must be the subject of judicial enquiry.

The actual possession by the manager of a company will not avail him if he has been validly dismissed by the company.—

**18 T. L. J.,** *940.*

8. Section 128 is applicable to cases of dispute concerning land, likely to cause a breach of the peace, even if one of the contending parties to the dispute claims only joint possession to such land (F. B.)—

**44 T. L. R.,** *320* (**=18 T. L. J.,** *1096*).

9. Clause 3 to Section 128 indicates that the Magistrate is empowered after the issue of the preliminary order to bring in any other person whom, from a subsequent information, it might seem to him to be proper to bring in, the scope of the enquiry not being thereby enlarged. The enquiry must remain one as to actual possession. The Magistrate has very wide powers to add parties either on his own motion or on the application of any one claiming to be concerned in the sense that he claimed to be in possession. Parties might be added at any time before the opening of the actual enquiry. It is not, however, in the contemplation of the Legislature that parties should be added after the commencement of the enquiry, though an order adding such a party for reasons which might appear sufficient to the Magistrate would not necessarily be bad.—**45 T. L. R.,** *52* (**=19 T. L. J.,** *123*).

10. It is the imminence of a breach of the peace that casts a duty on the Magistrate to take action under Section 128. The fact that the dispute is a longstanding one will not warrant a Court in refusing to take action.

It is now settled as far as the Travancore Courts are concerned that Section 128 can be invoked even between joint owners.

Lack of *bona fides* is an immaterial consideration in proceedings under Section 128. The question is one that relates to the actual possession of the property in dispute. Even in cases which exclude the possibility of any *bona fides* on the part of one of the parties, the Magistrate may take action under the Section to prevent a likely breach of the peace.

Absence of petitioner would not justify the rejection of his prayer to have the dispute settled by appropriate action under Section 128.— **19 T. L. J.,** *1092.*

11. See also under Sec. 406.— **19 T. L. J.,** *126.*

---

**Section 136.**

Vague, indefinite and uncertain information (on which it would not be possible to base any investigation) cannot be treated as first information under Section 136. Even if an information of a vague nature had been received earlier, statements given later if definite, certain and clear, can be admitted in evidence as the first information under the Section.

The station referred to in Section 136 can only be a station competent to prefer a charge before the Magistracy. Hence a statement recorded by an officer in charge of a non-charging station cannot be treated as first information.

First information cannot be used as substantive evidence. They could be used for the purposes of corroboration or contradiction. Such statements may be admissible as dying declarations under Section 390. But the weight to be attached to them will depend on how far they are supported by the other evidence in the case and the extent to which the solemnity of the occasion is shown to have operated on the mind of the declarant.

For the purposes of Section 390, it is not necessary that the deponent should express his apprehension of death in the declaration itself. The same would be proved from the attendant circumstances.

Every act done with knowledge of the likelihood of death resulting from bodily injury would not be murder. To constitute the same, further knowledge of the fact that the act in question is so imminently dangerous that in all probability it would cause death or such bodily harm as is likely to cause death is necessary. It should also be made out that such act was done without any lawful excuse.— **17 T. L. J.,** *743.*

**Section 138.**

Where a complaint is referred to the Police for investigation under Section 138 and a report is made by them referring the case as false, it is incumbent on the Magistrate before accepting the report to allow the complainant an opportunity to adduce the evidence he offers in support of his case. Section 181 has no application to cases referred under Section 138. Section 181 contemplates investigations under Section 180 on receipt of a complaint upon distrusting the truth of the allegations made therein. A reference for investigation under Section 138 is not one made on distrusting the truth of the complaint.— **18 T. L. J.,** *288.*

---

**Section 146.**

The statements recorded under Section 146 in the absence of the accused cannot be used except for purposes of corroboration or contradiction of the statements given by those witnesses before the Sessions Court. Even if they are taken in the presence of the accused, they could not be treated as substantive evidence in the case, as they would not constitute the evidence of a witness before the committing Magistrate as contemplated in Section 242. But if statements are intended to be used for purposes of contradiction, the provisions laid down in Section 145 of the Indian Evidence Act require the attention of the witness to be called to those parts therein which are to be used for such contradiction, before the writing could be proved. The prosecution is bound in such cases to allow such statements to go in and confront the witness concerned with the portions of the former statement relied on for purposes of contradiction and thereby allow the witness an opportunity to offer such explanations, as he may have, for the inconsistencies, if any.

The above remarks will apply with equal force to the statements made during the inquest, which cannot, under any rule of law, be treated as substantive evidence,

These remarks will not, however, apply to the statements of the witnesses before the committing Magistrate, as under the provisions of Section 242, the Court may, in its discretion, if such witnesses are produced and examined before it treat their statements as evidence in the case.

Although it is unsafe to base a conviction on the retracted statement of a witness, before the committing Magistrate, such conviction could not be illegal, if upon a consideration of the whole evidence the Court thinks that the statement before the committing Magistrate should be acted upon in preference to that made before the Sessions Judge. In such cases, the statements before the Magistrate must be placed on the same footing as those made during the trial itself. The Court is bound in such cases to explain why the statements before the Magistrate are preferred to those made during the trial.— **17 T. L. J.**, *633*.

#### Section 160.

See Sec. 366.—**17 T. L. J.**, *822*.

#### Section 170.

See under Sec. 4 (*a*).—**43 T. L. R.**, *379* (=**17 T. L. J.**, *816*).
" " 224.—**18 T. L. J.**, *1330*.

#### Section 173.

Before giving sanction to prosecute under Section 173, there are certain 'rules of prudence' which have to be observed and they are :—(1) There should have been a judicial determination by the Court, preceding the application for sanction, with respect to the matter for which the same is applied for. (2) The sanction must be based on legal evidence. (3) The Court must be satisfied that a *prima facie* case is made out so far as the person against whom the sanction is applied for. (4) Sanction can be issued only where the furtherance of the ends of justice requires it and not to satisfy a party's own private ends or personal spite.

The Court which gives sanction should abstain from giving anything like an analysis of the materials submitted to it for the purpose or expressing any opinion as to the probability or otherwise of a conviction.— **17 T. L. J.**, *667*.

#### Section 175.

A public servant can be deemed to be acting as such within the meaning of Section 175 only in cases where he has jurisdiction to take action in the matter with respect to which the offence in question is said to have been committed. If, on the other hand, he is not bound in law to act in the matter, but only takes undue advantage of his position as a public servant and does the act which constitutes the offence, no sanction can with propriety be required to enable the Court to take cognisance of the same.

It is clear that the provisions of Section 70 of the Police Regulation are wider and more comprehensive than those in the Criminal Procedure Code. The provisions of the Police Regulation and the Criminal Procedure Code as regards this matter cannot be held as mutually exclusive. By the provision in the Police Regulation, the Legislature has intended to give the protection provided in Section 175 of the Criminal Procedure Code, to another class of cases which could not be brought under Section 175. The additional cases intended to be so dealt with appear to be where the Police Officer commits an act purporting to be in the discharge of his official duties. This would relate to a case where the Police Officer, though not possessing jurisdiction to deal with the matter, acts as if he had authority to do such acts. But the provision has to be strictly construed. It could be made to apply only to cases where the law allows the act, but its validity is questioned by reason of any defect in the procedure or non-compliance with certain condition precedent. If the act in question is *per se* unwarranted by law, the same could not be held to be covered by the Section,

for it would be preposterous to hold that the commission of acts amounting to offences as an act purporting to have been done by such officer in the discharge of his official duties.— 18 T. L. J., *227.*

## Section 176.

1. The landlord is as much aggrieved as the lessee by trespass committed on the property and he is entitled to prefer complaint for criminal trespass, even though the trespass was committed when the lessee was in possession.— 19 T. L. J., *1297.*

2. Where a major offence not requiring a complaint is charged in the first instance, but a minor offence requiring a complaint under Section 176 is proved in the case a conviction for the minor offence is good although there was no complaint of the aggrieved party.— 19 T. L. J., *1361.*

## Section 178.

1. The object of Section 178 is to enable the Magistrate to ascertain whether there is *prima facie* ground for proceeding and to prevent the issue of process in cases which are frivolous or vexatious and tending merely to unnecessarily harass the accused.

The provision is not intended to be a mere form, but contemplates an intelligent enquiry into the subject-matter of the complaint, carried far enough to enable the Magistrate to exercise his judgment as to whether there is or is not sufficent ground for proceeding.

Such a statement has to be recorded only when the Magistrate is taking cognisance of the complaint. If he refuses to entertain the complaint for want of jurisdiction, the omission to record the statement would not amount to a non-compliance with the Section.— 17 T. L. J., *664.*

2. See Section 221.— 45 T. L. R., *15.*
" " 304.— 19 T. L. J., *396.*

## Section 180.

1. The failure to record the reasons for postponement of issue of process, as peremptorily required by Section 180, is only an irregularity and not an illegality.— 17 T. L. J., *415.*

2. Every complainant is entitled to have processes issued against the persons implicated by him unless the Magistrate distrusts the truth of the complaint or considers that no case is made out for proceeding with the case. In the face of the sworn testimony of the complainant, it would be unreasonable to start with a presumption of the falsity of such complaints. Normally, when the facts spoken to by the complainant make out an offence, the Magistrate should not, on the strength of the report of the Police, called for under Section 180, throw out the complaint.

It has to be remembered that Police reports by themselves cannot be treated as evidence. The statements in such reports have to be proved as much as other documents before being acted upon.— 17 T. L. J., *790.*

3. The expression "if any" occurring in Section 181 clearly shows that an investigation under Section 180 is not an essential pre-requisite for an order of dismissal under the Section.

The Police statements cannot by themselves be treated as evidence. They have to be proved as much as other documents filed by the parties. The dismissal of the complaint by the lower Court as false upon the strength of the Police report alone without allowing the complainant to adduce his evidence and without even the issue of processes to the accused is unjustifiable.— 18 T. L. J., *286.*

4. See under Sec. 221.—45 T. L. R., *15.*

## Section 181.

See under Sec. 138.— 18 T. L. J., *288.*
" " 180.— 18 T. L. J., *286.*

### Section 182.

Under Section 182, even though the offence with which the accused is charged is one in which according to the fourth column of the Second Schedule a warrant should be issued in the first instance, the Magistrate may issue, if he thinks fit, a summons for causing the accused to appear before him. Even if he issues a warrant, he has power under Section 57 to cancel it and to substitute a summons in its place.—

**19 T. L. J.,** *30.*

---

### Chapter XVIII.

What the Magistrate has got to determine in his preliminary enquiry is only whether there is a case for trial. 'There is always a case for trial when the evidence is of such a nature that the guilt of the accused can be held to be proved or disproved only as the result of the valuing and the weighing of the evidence.' The valuing and the weighing of the evidence for determining the guilt of the accused is the function of the trial Court, and therefore it is not correct to say that the power of the Magistrate holding the preliminary enquiry in giving an order of discharge is the same as in the cases triable by himself. As to what extent the enquiring Magistrate may go to examine the evidence to see if there is a case for commitment or trial, it may not be possible to arrive at a formula which will be of assistance in all circumstances, as each case has to be decided upon its particular facts. The following propositions may, however, be laid down as generally applicable to preliminary enquiries by the Magistrate:—

(1) The Magistrate has always to bear in mind that what he has to determine is only whether there is a case for trial by the Court of Session, and for this purpose, and this alone, he has to examine the evidence.

(2) If the evidence adduced in the enquiry is of such a nature that the guilt of the accused can be held to be proved or disproved only as the result of the valuing and the weighing of the evidence, the Magistrate has to commit the accused for trial.

(3) Where upon the evidence two views are possible, either on the merits or on any question of law, commitment would be the proper course.

(4) Where there is no evidence to prove the charge or the evidence is such that no reasonable person and no tribunal would ever on such evidence find the accused guilty, it would be a case for discharge by the Magistrate (F. B.).—

**44 T. L. R.,** *389* (=**18 T. L. J.,** *1104*).

---

### Section 186.

**1.** Section 186 gives the Magistrate a clear discretion to refuse to summon witnesses and his failure to record the reasons for deeming it unnecessary to do so amounts to a mere irregularity which will not invalidate the commitment, unless the accused has been prejudiced, and not an illegality, which will invalidate the commitment even if there has been no prejudice.—

**18 T. L. J.,** *124.*

**2.** In a case triable by the Court of Session, it is incumbent on the enquiring Magistrate under Section 186 to receive all the evidence adduced in support of the prosecution, unless the case falls under the latter part of Section 187.— **19 T. L. J.,** *414.*

---

### Section 187.

The committing Court should look to the grounds for commitment and not proceed to satisfy itself whether there is a case for conviction. The expression used in the Section is 'sufficient grounds for committing the accused'. This would not mean that no discharge is possible when there is some evidence adduced during the enquiry. The enquiring Court is perfectly competent to determine whether the witnesses are credible and the version given by them can be relied on. If the evidence renders it possible that two views can be taken, the Magistrate is bound to commit.

Again, when on the evidence a case is made out rendering the prosecution case possible but which on the existence of certain other circumstances would absolve the accused of guilt in the matter, the Magistrate should commit in order to enable the accused to prove such circumstances.

The power of the commitment Court to order discharge may be taken to be more or less the same as that under Section 230, with reference to the trial of warrant cases. The rules in warrant cases enjoining the Magistrate to have the award of the benefit of the doubt to the accused to a stage after the framing of the charge will be applicable to preliminary enquiries.—17 T. L. J., *781*.

### Section 192.

The absence of evidence to warrant a commitment is a question of law under Section 192.— 18 T. L. J., *384*.

### Section 202.

Where more than one person are tried together, it is the duty of the Court to frame certain charges against each of them. This is all the more essential where different acts are attributed to the accuseds. The charge must specify the acts for which each of the accused stands arraigned.

Under Section 202, mere omission or irregularity in the framing of a charge should be held to be curable under Section 413. But if the nature of the case shows that the accuseds have been embarrassed by reason of the defect in the charge, the conviction is liable to be set aside, as a failure of justice, as contemplated under Section 413, must be deemed to have been occasioned thereby.

Section 413 will not apply to infringements of statutory requirements of a mandatory nature.— 18 T. L. J., *627*.

### Sections 213—215.

In the nature of the express provision in Section 214 that a conviction could be entered under an offence, although the accused had not been charged with it in the cases contemplated therein, the argument that the provisions of this Section should be read with those of Section 204 which relates to additions and alterations of charges before judgment, cannot be accepted.

The doubts contemplated in Section 213 do not relate to facts. If there are any doubts on the facts which have been laid down as elements necessary to constitute the offence, the provisions of Section 213 cannot be invoked. But if the requisite facts are found and doubts arise as to which offence the accused is said to have committed, then alone could the provisions of Sections 213 and 214 be invoked and a conviction entered under an offence even though not specified in the charge.

The cases contemplated in Section 214 and those under Section 215 for a minor offence when the charge has been for a major offence are the only exceptions recognised by the Code to the rule that no conviction can be entered against an accused for an offence with which he is not charged.— 19 T. L. J., *32*.

### Section 219.

Section 219 which relates to the procedure in the trial of summons cases requires the Magistrate to explain to the accused the particulars of the charge against him before he proceeds to record the complainant's evidence. It is intended to take the place of a formal charge in warrant cases with the difference that it should be stated not after, but before the prosecution evidence is taken. It is incumbent on the Magistrate to comply with the provision and his omission to do so would amount to material irregularity which might prejudice the accused.— 17 T. L. J., *662*.

### Section 220.

Conviction of an accused person upon his plea of guilty, though not illegal, may not be desirable in grave offences, such as homicide. But in a summons case, where the

accused pleads guilty and the plea is taken down in strict compliance with the terms of Section 220, the Magistrate is bound under the provisions of the Section to convict him, unless sufficient cause is shown why he should not be convicted.—

**18 T. L. J.**, *131.*

---

### Section 221.

1. *Prima facie* the provisions contained in Section 221 would indicate that the Magistrate is bound to take all the evidence tendered by the prosecution before proceeding to dispose of the case. The disposal of the case without recording such evidence is therefore unjustifiable.

The Magistrate's omission to record his reasons for distrusting the truth of the complaint as required by Section 180 before a reference for an investigation is made, is only an irregularity curable under Section 413, and not an illegality. An interference with the order of the Magistrate could be made on this ground alone only if a failure of justice had been occasioned by the same.

The disposal of a case inaugurated on a complaint without recording the complainant's statement, after going through the several stages prescribed by the Criminal Procedure Code could not be interfered with and vacated as illegal on the strength of the above omission alone. Interference on such a ground should be confined only to cases where a failure of justice had been occasioned by reason of such omission.

Thus in cases where, in spite of such omission, the complainant is subjected to a lengthy examination at a later stage on the points set forth in the complaint, the omission to record a statement on receipt of the complaint which is in contravention of the peremptory provisions of Section 178 would be one falling under those specifically dealt with under Section 413, and the order of acquittal in a case of that kind should not be interfered with unless a failure of justice had been occasioned thereby.—

**45 T. L. R.**, *15.*

2. In summons cases, the Magistrate is bound to examine all the witnesses produced by the complainant. An order of acquittal passed without satisfying this requirement of law is an illegality.

But the Magistrate has a discretion in the matter of issuing processes to compel the attendance of the witnesses cited by the complainant or the production of documents. He is, however, bound to state in writing his reason for the refusal of such processes, so as to enable the superior Courts to examine whether the discretion allowed him in this matter has been exercised by him judiciously and not arbitrarily or capriciously.— **19 T. L. J.**, *457.*

---

### Section 222.

Though Section 222 does not confer on parties the right to be heard before the final decision is passed, Courts will be acting wrongfully if they refuse an express application by a party to be heard, on the ground of there being no express provision. If the accused has been materially prejudiced by this omission to hear him, the decision may be vacated in revision.

The studious avoidance of the use of the expression "accused" in the provisions of Chapter VIII of the Criminal Procedure Code, when considered along with the specific reference to the forum which could exercise jurisdiction in such cases as contradistinguished from the general provisions as regards forums contained in Sections 160 and 161 would clearly indicate that the intention of the Legislature is not to treat the persons against whom action is taken as "accused" referred to in the provisions relating to inquiries and trials in the other Chapters of the Code.

This is the preponderating view in British India as well. In this view, it is doubtful whether orders of discharge under Section 102 can be treated as amounting to acquittal.

Orders under Section 102 are revisable under Section 330.— **17 T. L. J.**, *899.*

---

**Section 224.**

**1.** In a summons case if the complainant is absent on the day to which the case is posted, the Magistrate does not act illegally in dismissing the complaint under Section 224, even though the complainant's presence was not required on that day for any particular purpose. The Section gives the Magistrate full discretion to dismiss the complaint or adjourn the trial.— **4 S. D.,** *402.*

**2.** Section 224 is inapplicable to prosecutions under the Abkari Regulation. For invoking the provisions of Section 224, it is essential *firstly*, that the case should be one in which summons had been issued on a complaint, and *secondly*, the complainant should be absent on the day to which the case stands posted.

The report of an Excise or Abkari Officer regarding offences under the laws they are called upon to administer cannot be treated as a complaint under the Criminal Procedure Code. A reading of Section 170, Criminal Procedure Code, shows that the report by the Officers in the Excise or Forest Departments and the Registrar of Chitties with reference to offences on which they could take action have been declared not to constitute complaints. In this view cases of prosecutions under these Regulations cannot be considered to be those in which summonses have been issued on a complaint within Section 224, nor could the particular Officer who has sent up the Report be a complainant within the meaning of the Code.— **18 T. L. J.,** *1330.*

**3.** Section 224 applies only to cases in which the summons has been issued on complaint, and, for purposes of that Section, the report of an Excise Officer is not, having regard to the provisions of Section 170, a complaint.— **19 T. L. J.,** *809.*

**4.** An order of acquittal under Section 224 can be passed on the day appointed for the appearance of the accused. It is not a necessary condition that he should have appeared.— **19 T. L. J.,** *855.*

**5.** See also under Sec. 4 (*a*).—

**43 T. L. R.,** *379*
**(= 17 T. L. J.,** *816***).**

**Section 225.**

A distinction has to be drawn between withdrawals under Section 225 and compositions under Section 256. Withdrawals are allowed to be made by the aggrieved parties who are the complainants. This is permissible only in summons cases. In view of its being the act of only one party to the proceeding, the Legislature has laid down that the same could be allowed only in cases where the Court, on a reference to the facts made out in the case, considers it a fit case for the grant of such permission, while in the case of compositions, the same being the result of the co-operation of both parties, the Court is ousted of all jurisdiction except in cases where its leave is made a condition precedent to the same being acted upon.

The two provisions are the only provisions in the Criminal Procedure Code, whereby proceedings once launched could be allowed to be terminated at the instance of parties. In all other cases, the Courts are bound to deal with the evidence before them and pass appropriate decisions in the light thereof.

Sections 225 and 256 are exhaustive, and the same could not be invoked in cases not expressly dealt with therein.— **17 T. L. J.,** *865.*

**Section 227.**

**1.** It is not illegal or irregular to award compensation to the accused even after a charge is framed against him.

A sentence of imprisonment in default of payment of the compensation, made along with the order for payment of compensation itself, is illegal.— **18 T. L. J.,** *868.*

**2.** Section 227 applies only when a person is accused of an offence triable by a Magistrate. It cannot apply where the

offence is one triable by the Court of Sessions.

An order under Section 227 cannot be passed without notice to the complainant.— **19 T. L. J.,** *221.*

---

### Section 229.

It has been held in Criminal R. P. No. 520-A of 1101 that, though a Magistrate has a discretion under Section 229 to examine only such of the witnesses as he thinks necessary, this discretion does not allow him to dispense with all the witnesses cited by the complainant. Even if this decision cannot be regarded as laying down an inflexible rule of law, it indicates a sound rule of practice.— **18 T. L. J.,** *1129.*

---

### Section 230.

An order of discharge under Section 230 cannot be considered to be a judgment as contemplated in Chapter XXV of the Code. The provisions of Section 273 cannot therefore apply to orders of discharge. Nevertheless a Magistrate should state with sufficient definiteness and precision his reasons for the discharge so as to enable the Revisional Court to satisfy as to whether the discretion vested in him has been properly exercised or not.

A bald order by him to the effect that the accuseds are discharged without stating anything in addition is not what has been contemplated by the Legislature.— **18 T. L. J.,** *1255.*

---

### Section 231.

See Section 258.—**18 T. L. J.,** *384.*

---

### Section 236.

1. It is not in every warrant case that a Magistrate will be competent to pass an order of discharge on account of the absence of the complainant. Unless the case falls under Section 236, he has no jurisdiction to pass the order of discharge.— **17 T. L. J.,** *675.*

2. The disposal of a case on a date on which it is not posted is illegal, and the Magistrate has no power to rectify the illegality. The illegal order of the Magistrate has to be set aside in revision.— **18 T. L. J.,** *937.*

3. See also "Miscellaneous" *Infra.*— **18 T. L. J.,** *459.*

---

### Section 240.

In a trial before a Court of Session or High Court, the Public Prosecutor conducting the case for the Crown is not bound to call as a witness for the Crown or to put into the witness-box for the purpose of cross-examination any of the witnesses appearing in the calendar as witnesses for the Crown whose evidence is in his opinion unnecessary.— **43 T. L. R.,** *62* (= **17 T. L. J.** *318*).

---

### Section 242.

1. In view of Section 242, there is nothing illegal in admitting the statement of a witness before the Committing Court as substantive evidence at the Sessions trial. But the admission of such evidence is within the discretion of the Sessions Judge. So, as in other cases where a question of the exercise of judicial discretion comes into play, the admission of such evidence must be regulated by well recognised principles. When the evidence before the Committing Court is preferred to the evidence given at the trial, the Court is bound to explain why the statements before the Magistrate are preferred. When a Court proposes to admit the evidence before the Committing Court, it is to do so only after notice to the accused and the prosecution. It is not enough to read parts of such evidence to the witness for the purpose of corroborating or contradicting him. Unless a witness has been asked to explain the discrepancy in his statement

before the Committing Magistrate and that before the Sessions Court, it is not proper to transfer his previous statement before the Committing Magistrate to the record of the Sessions Court, and even if a satisfactory explanation of the discrepancy is not forthcoming, the existence of only one discrepancy will not justify the use of Section 242.

To say that where the deposition of a witness before the Magistrate differs from the deposition at the Sessions, the former is to be invariably preferred, is to state the rule inelastically. The safer rule is that, with respect to omissions in statements in Court and previous statements, it must be left to the Court in each particular case to decide whether the omission leads to a contradiction or not. If there is a satisfactory explanation the previous omission of a particular fact need not preclude the Court from accepting evidence of that fact in a subsequent statement. But as a rule a previous statement would carry great weight.— **19 T. L. J.**, *1402*.

**2.** See also Sec. 146.— **17 T. L. J.**, *633*.

### Section 247.

Where a charge of previous conviction was alleged against the accused who was found guilty only of the abetment of certain offences: *Held*.—The Sessions Judge acted rightly in declining to proceed against the accused under Section 247.— **45 T. L. R.**, *14* (=**19 T. L. J.**, *80*).

### Section 253.

**1.** Even assuming that proceedings under Section 366 partake of the nature of Criminal enquiry, it cannot be said that they are controlled by Section 253.

The object of examination of the accused under Section 253 is served by the special provision in Clause 9 of Section 366, under which the person against whom the enquiry is held may claim to be examined as a witness, and the Magistrate is bound to do so in such cases. In view of such a special rule of procedure, the provisions of Section 253 cannot be taken to have been intended to be applicable to proceedings under Section 366.— **18 T. L. J.**, *38*.

**2.** The failure of the Magistrate in a warrant case to question the accused generally on the case after the prosecution witnesses have been examined and before he is called upon for his defence is a mere irregularity which could be condoned in case the Magistrate has questioned the accused before framing the charge and has given him an opportunity to explain the circumstances appearing against him in the prosecution evidence. Unless fresh circumstances are brought to light by the examination of the prosecution witnesses after the charge is framed, it is not likely that the accused would be prejudiced.— **18 T. L. J.**, *128*.

### Section 255.

**1.** A Sub-Registrar refused the registration of a document on the denial by the alleged executant of his signature in the document; and the first accused (who presented the document for registration) appealed to the District Registrar who held the document to be a forged one. The 1st accused then instituted a civil suit to have the document compulsorily registered. Meanwhile, criminal proceedings had been instituted by the alleged executant in respect of the forgery. The 1st accused sought to have the criminal proceedings stayed till the disposal of the civil suit. The Magistrate refused stay of criminial proceedings. On revision before the High Court : *Held*.—It was not obligatory on the Magistrate to stay proceedings till the disposal of the civil suit, and he might use his judicial discretion in the matter.— **4 S. D.**, *410*.

**2.** While on the one hand it would be a dangerous doctrine to lay down a hard and fast rule to the effect that a criminal trial or enquiry should of necessity be stayed, because a civil suit has been instituted between the parties in which some of the matters in issue in the criminal case would have to be determined, it cannot be denied that, in some cases, it would be obviously

undesirable to allow the same dispute to be fought out in two Courts, namely, the Civil and the Criminal.

It is unsafe to lay down a general rule that no stay of criminal proceedings can be ordered when the civil suit has been instituted later.

The objection that once the criminal proceedings against the accused are stayed, he will be in no hurry to bring the civil litigation to a close cannot hold good where the complainant himself has started the civil proceedings.

It is entirely within the discretion of the Magistrate to stay proceedings till the disposal of the civil suit, and the High Court will not interfere unless the discretion has been exercised arbitrarily so as to defeat or hamper justice.— **17 T. L. J.**, *911.*

#### Section 256.

See Sec. 225.—**17 T. L. J.**, *865.*

#### Section 258.

The provisions of Section 258 are not controlled by Section 231 and the discretion vested in the Magistrate under Section 258 is very wide.— **18 T. L. J.**, *384.*

#### Section 261.

1. A preliminary enquiry by a Magistrate into a case exclusively triable by a Court of Session is not, before framing of the charge, a 'trial' within the meaning of the Proviso (*a*) to the Section and a Magistrate who succeeds another is not bound in such a case to resummon and rehear the witnesses examined by his predecessor, though demanded by the accused.— **43 T. L. R.**, *324.*

2. In a case governed by Proviso (*a*) to Section 261 which requires not exactly a recommencement of the trial but only the resummoning and rehearing of such of the witnesses as may be required by the accused, the second trial should be treated as a continuation of the first, the charge framed by the first Magistrate also continuing.— **18 T. L. J.**, *119.*

3. See also Sec. 12-A.—**44 T. L. R.**, *158.*

#### Section 273.

1. Under Section 273, a Magistrate is bound to specify in his judgment of what offence the accused is found guilty.

Such omission will not however vitiate the judgment where the accused has not been prejudiced. Such a defect is curable under Section 413 where no failure of justice has been occasioned.— **18 T. L. J.**, *1071.*

2. See also Sec. 230.— **18 T. L. J.**, *1255.*

#### Section 290.

Custody under Section 290 of an accused is not simple or rigorous imprisonment for the offence, but only detention in custody pending judgment of the Appellate Court (like detention and remand pending trial in the original Court).— **4 S. D.**, *393.*

#### Section 291.

Where a prisoner was sentenced on 17-1-1081 to 15 days' rigorous imprisonment and to receive ten lashes, the question arose as to when the sentence of whipping should be inflicted on him: *Held.*—Under Criminal Circular 10 of 1078 the prisoner ought to be released on the 15th day, *i. e.*, on the 31st Chingom and at such time of that day as will enable him to reach his house before dark. Section 291 should be construed in the light of this Circular which has the force of law. The 15th day must be taken to expire on the afternoon of the 31st, *i. e.*, at the point of time indicated by the Circular. At that time, therefore, the whipping may be inflicted.— **4 S. D.**, *392.*

#### Section 295.

See 'Miscellaneous,' *Infra.*— **18 T. L. J.**, *459.*

### Section 304.

**1.** To attract the provisions of Section 304, it is essential to make out—

(1) That the accused indicted a second time was charged before a Court of competent jurisdiction.

Where a complaint or sanction, as required in Sections 173 to 177 is not had at the previous trial or where the Court had not the power to try the case consistently with the provisions of Sections 160 to 165 relating to local jurisdiction except in cases where the same had been transferred to its file by an appropriate proceeding by a Court of competent jurisdiction, an order of acquittal passed in an earlier case even if it be on the same facts and not covered by the exceptions set forth in paragraphs 2 and 3 of Section 304, would not operate as a bar in a second trial.

(2) That he was tried by that Court before. The trial should be deemed to have commenced after the inauguration of proceedings before a Court.

(3) That he has been acquitted or convicted by that Court.

It is not open to the Court before which the second case has been brought, to impeach the order of acquittal as improper on any ground. In considering whether there has been an order of acquittal or not, it is the substance of the decision and not the wording that ought to be looked into. An acquittal may be validly entered so as to bar a further trial, even where the trial has not been completed, as would result from the non-appearance of the complainant under Sections 234 and 236 and withdrawals under Sections 225 and 271. An acquittal under the Section need not necessarily be on the merits for applying the rule of *autrefois acquit.*

(4) That such acquittal or conviction remains in force.

If the order of acquittal has been set aside by a superior Court in appeal or revision, the provisions of this Section are inapplicable.

(5) That the second trial has been for the same offence or on the same facts for any other offence for which a different charge from the one made against him might have been made under Section 213 or a conviction entered under Section 214.

What is to be considered is whether the Court which tried the first case can upon the evidence deal with the offence for which the charge has been laid at the second trial, *i. e.*, whether the facts are the same in both trials and whether the acquittal on the first charge necessarily involves an acquittal on the second charge. *Held* applying the above conditions.—The words alleged to have been used by the accused may perhaps amount to an offence under Section 292 of the Penal Code triable summarily by the prior Court as a Court of competent jurisdiction and as process had been issued to the accused before the complaint was withdrawn in the prior case, he must be deemed to have been tried and acquitted before.

However as the present charge was one under Section 507 of the Penal Code which is compoundable without the permission of Court and therefore requires a complaint by the aggrieved party as a condition precedent for cognisance by the Court, the order of acquittal in the prior case would not render the present trial incompetent.—

**45 T. L. R.,** ***384.***

**2.** A prior order of discharge will not justify a refusal to re-entertain a complaint as the only bar which would justify such a course is the rule of *autre fois* convict and *autre fois* acquit contained in Section 304.

The refusal to re-entertain a complaint without conforming to the procedure of Section 178, is an irregularity which would require the order to be vacated if there has been a failure of justice.— **19 T. L. J.,** ***396.***

---

### Section 317.

In warrant or non-compoundable cases, where their conduct in the trial Court was entirely in the hands of the Police, no notice of appeal to complainant is necessary

Where the complainant had the control of the prosecution before the trying Magistrate or where proceedings were initiated by a private party and he was allowed to continue the case independently of the Police, or where the Police sent up a referred charge sheet but; the complainant was able to substantiate his allegations by evidence adduced by him, or in compoundable cases and in cases where the offences are compoundable with the permission of the Court under paragraphs 2 and 3 of Section 256, a notice to the private complainant may be considered essential in the interests of justice, and a failure to do the same may, in appropriate cases, be put down as irregular so far as proceedings in Appellate Courts are concerned.— **17 T. L. J.**, *657*.

---

### Section 318.

1. Where in an appeal from conviction, the Appellate Court reverses the finding and sentence and orders a re-trial of the accused under Section 318, Clause (*b*), the whole case is re-opened and the accused must be tried again on all the original charges. The effect of a reversal of the conviction and an order for re-trial is to wipe out the proceedings previously taken. The subordinate Court to which the case is remanded for re-trial should start the trial afresh, receive all the evidence and decide the case upon the evidence received in the fresh trial. It should completely detach itself from any impression formed upon the evidence taken at the previous trial and come to an independent conclusion. The statements of the same witnesses obtained at the previous trial cannot be admitted and read as substantive evidence, even though the accused consents thereto, but they might be used for the purpose of corroboration in the manner and to the extent allowed by the rules of evidence.

*Per Bhoothalingam Aiyar, J.*—The retrial ordered under Section 318, Clause (*b*), should commence alike in summons and warrant cases from the time when the accused appears or is brought before the Court.—

**43 T. L. R.**, *383* (=**17 T. L. J.**, *610*).

2. An Appellate Court could alter the findings of the first Court on the facts appearing in the evidence and could convict for offences of which the lower Court had acquitted the accused, provided it does not interfere with the sentence and provided also that the accused knew the charges sustained by the Appellate Court from the commencement.— **19 T. L. J.**, *828*.

---

### Section 319.

1. Where the law allows an appeal, the appellant is entitled to have from the Court of Appeal that has to deal with it an explicit opinion on the questions of fact involved in the case, and the Court of Appeal should take its own view of the evidence after perusing the record. Its judgment should be such that the High Court as a Court of Revision might, on looking into the judgment, be in a position to judge for itself what the case is and how far the Court of Appeal has considered the evidence as bearing on the guilt or innocence of the individual accused before it affirmed the judgment of the trial Court. In the case of joint trial, the judgment of the Appellate Court, dealing with the case of several accused should show on the face of it that the case of each accused has been taken into consideration, and should state reasons, as far as may be necessary, to show that the Court has devoted judicial attention to the case of each accused.— **17 T. L. J.**, *308*.

2. An Appellate Court which writes a judgment which the High Court in revision is unable to follow without reference to the judgment of the trial Court is not acting obviously in the discharge of the duty imposed on it by law. The judgment of an Appellate Court dealing with the cases of several accused convicted in a joint trial must show on the face of it that the case of each accused has been taken into consideration and should state reasons to show that the Appellate Court has devoted judicial attention to the case of each accused.—

**17 T. L. J.**, *740*.

### Section 326.

The Dewan acting under Section 2 of the Extradition Proclamation of 4th Karkatakom 1093, cannot be deemed to be a subordinate Court within the meaning of Section 326, so as to enable the High Court to revise the Dewan's order.—

43 T. L. R., *353* (=17 T. L. J., *928*).

### Section 329.

The report contemplated in Section 329 must necessarily relate to the correctness, legality or propriety of any finding, sentence or order recorded or passed or the regularity of the procedure adopted by an inferior Criminal Court. It must relate to something already done by such subordinate Court, the legality, propriety or soundness of which is doubted by the referring Court. The provisions of the Section could not legitimately be invoked for inviting the views of the High Court upon a question of law in a pending case, which either the trying Court or the referring Court finds it difficult to solve. To construe the Section as admitting of such reference would afford a premium to the subordinate judiciary to seek for pronouncement of opinion on questions which they are called upon to solve in matters coming up before them judicially. Such shirking of responsibility on the part of the subordinate judiciary has to be invariably dis-countenanced by the High Court and a discharge of the duties cast upon the subordinate Courts by the statute always rigidly enforced. The provisions relating to reference contained in Chapter XXXI of the Code requires the High Court to act as a Court of correction and not as a referee or legal adviser with respect to matters in the solution of which the law requires the subordinate Courts to act independently.— 17 T. L. J., *502*.

### Section 330.

1. The powers of the High Court in revision are very wide and in appropriate cases, it would only be reasonable to re-open the conviction and sentence where notices of enhancement are issued to accused, though ordinarily the High Court would be reluctant to disturb the findings of fact by the lower Court.

It is with a view to accord legislative sanction to this principle that Section 439 of the Indian Criminal Procedure Code has been amended by the introduction of Clause (C). This amendment could with advantage be adopted by our Legislature also.

An enhancement of sentence should be ordered only when that already imposed is manifestly inadequate and the powers of the High Court should be exercised in exceptional circumstances.— 17 T. L. J., *836*.

2. Powers of interference in revision against acquittals should be most sparingly exercised and only in cases where it is urgently demanded in the interests of justice or when there has been a denial of the right of fair trial.— 18 T. L. J., *171*.

3. See also Sec. 128.—18 T. L. J., *342*.

### Section 333.

See Sec. 366.—44 T. L. R., *309* (=18 T. L. J., *926*).

### Section 349.

A judicial enquiry into the soundness of mind or otherwise of the accused has to be considered indispensable in the light of the express provisions of Section 349. In the nature of the provisions in Sections 347, 349 353 and 354, the fitness of the accused for making the defence has to be determined judicially by the Magistrate and not upon the strength of any letter received by him from Government. Even if it be held that the certificate of the Darbar Physician or visitors which has been declared to be receivable in evidence in such cases under Section 354, is deemed to be sufficient to make out such fitness, it is seen that such a certificate was not available, in the case, before the Magistrate at the time he resumed the enquiry. The letter from Government could not be considered legal evidence. Also, the Surgeon doing duty as

Darbar Physician did not make a personal examination of the accused, but simply acted upon the report of the Medical Officer in charge of the Lunatic Asylum in that behalf. The communication upon which the Government acted could not therefore be considered to be a certificate issued by the Officers specified in Section 354 and declared to be receivable in evidence thereunder. The Medical Officer in charge of the Lunatic Asylum could not be taken to be a visitor as contemplated by the Section.

In enquiries as regards the soundness of mind of accused conducted under Chapter XXXIII, the burden of proving soundness of mind and capacity to make his defence is on the prosecution.

A letter of the Medical Officer *per se* should be considered insufficient to prove such soundness.

The omission to take evidence as to the capacity of the accused to make his defence at the time of the resumption of the proceedings by the Magistrate has therefore to be pronounced irregular.

But this irregularity cannot vitiate the whole proceedings as it could be cured by Section 413, inasmuch as it could not be said to have occasioned a failure of justice within the meaning of the Section. In determining whether any particular irregularity is or is not curable under Section 413, the tests to be applied are whether the error goes to the root of the trial, whether it in effect vitiates the proceedings, whether the Court assumed an authority which it did not possess, and whether it had broken the vital rules of procedure. If all the above questions are answered in the affirmative, the defect will have to be treated as incurable. The mere fact that a certain provision of the Code is imperative does not of itself indicate that breach of that provision vitiates the whole proceedings. In fact an error could be occasioned only by a transgression of some provision of the Code. If the matter had been discretionary, the omissions relied on could not be called errors at all.

Inasmuch as the trial had already taken place, its validity alone has to be considered. Any defect or irregularity in the procedure adopted by the enquiring Court cannot vitiate the trial, for the power vested in the High Court under Section 192, to quash the commitment could not be exercised after the accused had been put on trial and had pleaded to the charge before the Sessions Judge.

Though it is incumbent upon the Sessions Judge not to proceed upon the order of the committing Magistrate regarding the mental condition of the prisoner in a case where action was taken under Section 345, and the prisoner declared to be of sound mind after the examination by the Medical Officer, where he himself entertained doubts about the mental state of the prisoner at the time of the trial, but to hold an independent enquiry into the matter himself, such a course is not necessary if there is no room for his entertaining such doubts.—

**17 T. L. J.**, *262*.

### Section 360.

The directions contained in Section 360 are mandatory and the omission to record the particulars required by the Section are fatal to the proceedings taken thereunder.

If the offence is under Section 226 of the Penal Code, the record must also show the nature and stage of the judicial proceedings in which the Court interrupted or insulted was sitting and the nature of the interruption or insult.

Contempt of Court being a criminal offence, no person can be punished for such unless the specific offence charged against him is distinctly stated and an opportunity given him of answering.

Refusal to enter the witness-box is an offence under Section 172 of the Penal Code.— **43 T. L. R.**, *209*.

### Section 366.

1. It is only when there is a wilful neglect of the order to pay maintenance

that the Magistrate can, under Section 366, issue warrant for the levy of maintenance. Hence, if the matter has been once settled between the parties out of Court and after the order to pay, no warrant can issue for the levy of maintenance under the order.—
**4 S. D.,** *405.*

**1.** Under Section 366, a father cannot refuse to maintain his children on the ground that they live with their mother, if they are unable to maintain themselves. A father offering to maintain his minor child only if left in his custody may be guilty of neglect or refusal in the eye of the law to maintain the child.— **17 T. L. J.,** *306.*

**2.** The form where proceedings under Section 366 have to be conducted will have to be determined by reference to the provisions relating to the same contained in Clause II of the Section itself. The use of the word "accused" will not warrant the view that Section 160 of the Code relating to the forum which has to enquire into and try offences, will be applicable to proceedings under this Section.

It is a general rule of construction that of two Clauses occurring in a statute, one having a general application and the other applying to a particular class of cases, the latter will control the former.

It is doubtful whether the expression "Offence" in Section 160 is to be construed as covering cases of neglect and refusal under Section 366.

The word "may" in Clause II of Section 366 does not mean that it is open to the petitioner to choose the forum herself. Though the choice of the forum is left to the petitioner, such choice is required to be made from among the Courts specifically enumerated in the Section.

It is doubtful whether the expression "in the District" occurring in Clause II can be construed as denoting the particular portion of the District over which jurisdiction has been conferred on the First Class Magistrate before whom proceedings have been taken. As the Clause stands, initiation of proceedings under Section 366 before a First Class Magistrate in the District in which the counter-petitioner resides, although the place of residence would be beyond the actual limits of the territorial jurisdiction of his Court, cannot be treated as unwarranted by those provisions.

It is only in cases where no permanent place of residence is had by the parties, a temporary sojourn could not give jurisdiction to Courts within the territorial jurisdiction of which the same is made. The preponderance of authority favours the view that if the stay at a particular place is made *bona fide* and is not casual, colorable or collusive for the purpose of creating jurisdiction, the same would be sufficient to create jurisdiction in spite of the stay being only for a short period.

In all applications for transfer, the truth or otherwise of the allegations will have to be examined, and the Court will have to decide whether on the facts disclosed, a reasonable inference of apprehension could be drawn. An improper exercise of discretion or a *bona fide* mistake of law cannot be sufficient ground. The Courts should refuse to subscribe to the doctrine that a litigant should be able to get a transfer upon an application containing unfounded and baseless allegations against a judicial officer and thereafter representing that after making such allegations, it would not be possible for him to expect justice at his hands. Casual acquaintance with parties cannot bar judicial officers from taking congnisance of controversies coming before them.

The powers of the High Court cannot be invoked in revision with regard to orders of transfer, unless the discretion has been exercised on improper grounds.—
**17 T. L. J.,** *822.*

**4.** The educational expenses of a child cannot be regarded as coming within the meaning of the word maintenance. The object of proceedings for maintenance is to prevent vagrancy, and that object is attained by the provision of lodging, food and

clothing. It does not include the cost of education.— **18 T. L. J.**, *173.*

**5.** No period of limitation has been prescribed by law for enforcing the arrears of maintenance ordered by the Magistrate under Section 366. The corresponding Section (488) of the British Indian Code has been amended by the addition of a Proviso to Sub-section (3) prohibiting issue of warrant for the recovery of any amount under the Section unless the application therefor be made within a period of one year from the date on which it became due. In the absence of such an amendment in the Regulation, the plea of absolute limitation is unsustainable.

But the plea that enforcement of payment of accumulated arrears of maintenance for a long period is not within the provisions of Section 366 cannot be wholly disregarded. Enforcement of payment of accumulated arrears of maintenance ordered under the Section is a matter within the discretion of the Magistrate and the discretion has to be exercised according to the circumstances of each case. "No hard and fast Rule can be laid down as to whether a Magistrate should grant or refuse an application for recovery of arrears of maintenance. The Magistrate should ascertain in each case under what circumstances the arrears came to accumulate and if there was no good reason why the application for recovery should not have been made with greater promptitude and whether it would be equitable and in accordance with the spirit of the Code to enforce payment of the accumulation. The Magistrate should also consider whether he should enforce payment of any part of the arrears where in his opinion it is not proper to enforce payment of the whole of the arrears."

The view that payment of the maintenance awarded under Section 366 could be made only through Court has no basis in law.— **18 T. L. J.**, *350.*

**6.** Civil Courts should not be allowed to restrain a Magistrate from executing his order passed under Section 366 by an injunction, on a mere *prima facie* case established in the Civil Courts. The case will be different when the Civil Court gives a decree after a full enquiry about the relationship of the parties.

In granting injunctions, the Court operates *in personam*, and there is no reason for thinking that the Indian Legislature, when it spoke of staying proceedings by injunction intended any departure from that practice. The injunction therefore operates not only as regards a Court but also the parties concerned.— **43 T. L. R.**, *426*
(=**18 T. L. J.**, *694*).

**7.** The liability to maintain the children under Section 366 continues till the completion of the 18th year of age of the children, in the absence of an allegation that they are maintaining themselves earlier.

The word "child" means a person who has not reached full age. It is only when the person concerned becomes a major that he may be deemed to be able to maintain himself by his own exertions, not having had before that date the capacity to enter into contracts with others or enforcing his rights himself against others. The circumstances that the minor concerned is in a position to maintain himself or herself by self-exertion cannot, under ordinary circumstances, exonerate the father from his liability under this Section. If however the Court finds as a fact that the person on whose behalf maintenance is claimed is maintaining himself or herself as the case may be by his or her own exertions, no maintenance could be awarded under Section 366, and if an award is already had, the same should not be given effect to by reason of the altered circumstances. Even after the attainment of majority, the liability may be held to continue if the Court finds as a fact that the offspring is unable to maintain itself by reason of its want of physical or mental capacity. After the Travancore Majority Regulation, VII of 1099, the age of majority of 16 under the common law of Travancore as laid down in 38 T. L. R, 51 cannot be recognised.

The marriage of a minor daughter would not *per se* warrant an exoneration of the father from liability to maintain.—

**44 T. L. R.**, *154* (=**18 T. L. J.**, *932*).

**8.** Neglect or refusal to maintain a wife or child is not an offence as defined in the Penal Code. There is therefore no question of an 'offence' in the class of cases under Section 366, and consequently there is no 'charge' which a Court has to try.

Hence Section 333 is not applicable to cases under Section 366, and European British subjects can be proceeded against in the ordinary Criminal Courts of the State on application made against them for maintenance (F. B.).—**44 T. L. R.**, *309*. (=**18 T. L. J.**, *926*).

**9.** In applications under Section 366, the Magistrate must clearly find the means of the counter-petitioner. What is expected of him in such cases is to determine what properties are possessed by the counter-petitioner and what income he derives from them and other sources, if any. In the absence of such a finding, any award made must, by its very nature, be arbitrary.—

**18 T. L. J.**, *939*.

**10.** The words "living in adultery" occurring in Section 366, Clause (5), refer to a course of adulterous conduct which is something more than a single lapse from virtue. "A single act of adultery does not necessarily amount to living in adultery so as to disentitle the wife from applying for maintenance under the Code."

A child born of a married woman has to be presumed to be the child of the husband under the principle embodied in Section 112 of the Indian Evidence Act. In order to displace this presumption, it requires the strongest proof of non-intercourse between the husband and wife during the time the child could have been begotten, and the burden of adducing such evidence is heavily on the person who pleads illegitimacy.—

**45 T. L. R.**, *44* (=**19 T. L. J.**, *381*).

**11.** In the enforcement of the order of maintenance passed under Section 366, paragraph 3, a certain amount of discretion is vested in the Magistrate. That does not mean he can arbitrarily refuse to enforce any order passed by him under the Section.

Enforcement of payment of accumulated arrears of maintenance ordered under Section 366 is a matter within the discretion of the Magistrate.— **19 T. L. J.**, *638*.

**12.** See Sec. 253.—**18 T. L. J.**, *58*.

„ Regn. III of 1100.—

**19 T. L. J.**, *61*.

### Section 367.

The Section empowers the Magistrate in appropriate cases to take the change in the circumstances of the means of the counter-petitioner and alter the rate. The Section enables the Court for sufficient cause shown even to cancel an order awarding maintenance if the child is able to maintain itself otherwise.—**17 T. L. J.**, *342*.

### Section 390.

See Sec. 136.—**17 T. L. J.**, *743*.

### Section 392.

**1.** To warrant action being taken under Section 392, there should be evidence on record.

It cannot however be laid down that the fact that a forfeiture has been occasioned should be affirmatively proved independently of any statement by the person against whom the penalty is sought to be enforced. The admission of such person can be treated as legal evidence in the matter.

Under Section 392 the Magistrate is bound to record the grounds of the proof relating to the forfeiture in the order passed by him. But omission to do so is only an irregularity which could be cured under Section 413.— **18 T. L. J.**, *23*.

**2.** The crucial distinction between the offences of criminal misappropriation and criminal breach of trust seems to be that, in the case of the former, the property should have come into the possession of the offender casually or otherwise and not by

virtue of a lawful entrustment. If there has been such entrustment, the offence would be one of criminal breach of trust.

Though not executed directly to the Court, Kychits executed by Moonamsthanakarans before the Police in pursuance of orders of Court have to be treated as bonds taken under the Criminal Procedure Code. The Courts under whose orders such bonds are taken have jurisdiction to take action under Section 392, and, after satisfying the requirements laid down therein, to enforce the penalty provided for in the bonds.—

**18 T. L. J.**, *203.*

---

### Section 395.

**1.** Although the Criminal Procedure Code provides for no appeal against orders passed by the Sub-Magistrate under Section 395, the District Magistrate's Court has power to set aside the order. In order to give jurisdiction to the District Magistrate's Court, it is not necessary that an appeal should have been preferred or be pending in the Court. The District Magistrate has the power under Section 398 to set aside an order passed by the Sub-Magistrate under Section 395, without any appeal being actually filed.

The expression "a Court of Appeal" in Section 398 is wide enough to include a Court to which appeals ordinarily lie.

Where it is a case of discharge under Section 230, no appeal lies to the District Magistrate, and hence he is not a Court of Appeal so far as orders under Section 395 are concerned.

In a case of acquittal also, the District Magistrate is not the Court of Appeal contemplated by Section 398.—

**18 T. L. J.**, *623.*

**2.** See also Sec. 401.—**18 T. L. J.**, *71.*

" Regn. IV of 1090.—

**45 T. L. R.**, *261.*

---

### Section 398.

See Sec. 395.—**18 T. L. J.**, *623.*

---

### Section 400.

As Section 400 gives an extraordinary power to a Criminal Court, it has to be strictly construed. To justify an order under Section 400, the Court must find (1) that the offence was attended by criminal force, and (2) that some person was dispossessed of property by the use of such force. Mere show of force or criminal intimidation is not sufficient.— **18 T. L. J.**, *1068.*

---

### Section 401.

The scope of Section 401 is confined to property seized by the Police of their own motion or in exercise of the powers conferred on them by law. Once the property is sent on to the Magistrate with charge sheet, it is removed from the purview of Section 401 and the Magistrate must then act under Section 395. The provisions of Chapter XLI of the Code relating to disposal of property, not having been amended on the lines of the British Indian Code, an order for disposal of property under Section 395 can be passed only on the conclusion of the enquiry and not during the same.—

**18 T. L. J.**, *71.*

---

### Section 404.

The principles embodied in Sections 404 and 405 are intended for general application to all Courts vested with the power of transfer, and subordinate Courts are bound to stay proceedings when they are informed that any party is intending to make an application for transfer to any Court having power to order the transfer.—

**17 T. L. J.**, *51.*

---

### Section 405.

**1.** When a party to a criminal case notifies in time his intention to move the High Court for transfer of the case under Section 405, it is incumbent on the Court, before which the case is pending, to adjourn the case for a reasonable time to enable the party to make his application for the purpose to the High Court. Disregard of the

express direction contained in the Section on this matter renders the subsequent proceedings illegal, especially where, without the adjournment asked for, the party could have had no time in the course of the enquiry or trial to make his application to the High Court.— **18 T. L. J.**, *1131*.

**2.** See also Sec. 404.—**17 T. L. J.**, *51*.

### Section 406.

**1.** The provisions of the Criminal Procedure Code which confer jurisdiction on the District Magistrate to transfer cases will enable the transfer of proceedings relating to a dispute as to the possession of land or water, before an order under Clause (1) of Section 128 has been passed. Such proceedings constitute "a case" within the meaning of Section 406.— **19 T. L. J.**, *126*.

**2.** See also Sec. 366.— **17 T. L. J.**, *822*.

### Chapter XLIII.

Where during the course of the trial, the Magistrate was transferred, and the accused demanded of the succeeding Magistrate that the witnesses who had been examined should be recalled and reheard, and the prayer was refused : *Held.*—The judgment of the trial Court was vitiated by the illegal procedure adopted, and this irregularity cannot be treated as cured under Chapter XLIII of the Code.

In a case where the witnesses which the accused wished to resummon were dead or where the witnesses appeared and retracted their previous statements, it would not be permissible to treat the previous depositions as evidence.

Much importance attaches to the impression made on the Court by the appearance of the witnesses and the manner in which they depose in the box, and it is very difficult in any case to hold that the accused have not been prejudiced by the fact that the Magistrate who judged them had not the opportunity of noting the demeanour of the witnesses.— **18 T. L. J.**, *615*.

### Section 413.

**1.** Trial of a warrant case as a summons case has to be regarded as disobedience of the express provisions of the Code and it is more than a mere irregularity not cured by Section 413. It is practically an illeglity which vitiates the trial.—**13 T. L. J.**, *617*.

**2.** See Section 202.—**18 T. L. J.**, *627*.
„ 221.—**45 T. L. R.**, *15*.
„ 273.—**18 T. L. J.**, *1071*.
„ 349.—**17 T. L. J.**, *262*.
„ 392.—**18 T. L. J.**, *23*.

### Section 433-A.

See Regn. VI of 1094.—**44 T. L. R.**, *139* (=**19 T. L. J.**, *28*).

### Miscellaneous.

**1.** The accused in the case were charged under Section 326 of the Penal Code. On 24-3-1102, the complainant was found not present. An order of discharge was entered under Section 236, Criminal Procedure Code. On 25-3-1102, on the application of the complainant, the Magistrate restored the case to the file on the ground that the case was really posted to 25-3-1102 and not on 24-3-1102. On the question whether the Magistrate had powers to order such restoration : *Held.*—The Magistrate had no such power. His order of discharge was also illegal.

An irregularity or illegality of procedure cannot make a Court's order *ipso facto* void. A competent superior Court alone could rectify the error committed in the matter by a trial Magistrate. It is doubtful whether Criminal Courts can rectify errors in the exercise of inherent powers, in the face of the express prohibition contained in Section 295.— **18 T. L. J.**, *459*.

**2.** Where the Sub-Magistrate disbelieves the factum of the occurrence, it is not necessary for him to record a finding as to possession, and the High Court may expunge such finding if it thinks fit. But the position is different where the offence complained of involves as an essential element the

possession of immovable property and where, after considering the evidence adduced by the parties on that point, the trial Court has recorded a finding as to possession. The mere fact that on some ground or other, the Magistrate disbelieves the case of a wrongful act being done on the property and at the time and in the manner stated in the complaint, should not be made a reason for deliberately nullifying a finding as to possession arrived at perhaps after laborious sifting of the evidence on both sides. The effect of such action would only be to leave the parties open to further occasion for a complaint on the very same dispute as to possession, which if the finding had not been nullified, would have been avoided.

The dicta of the High Court that, if the occurrence is disbelieved, the question of possession becomes irrelevant, are being taken advantage of by indolent Magistrates to shirk the consideration of the question of possession even in cases where a finding as to it would materially help in properly appreciating the oral evidence as to the factum of occurrence complained of.

Sub-Magistrates should be made to understand that the High Court does not encourage perfunctory disposal of cases for the purpose of avoiding the consideration of evidence as to the possession of immovable property.— **45 T. L. R.,** *58* (=**18 T. L. J.,** *982*).

**3.** The Code of Criminal Procedure provides for award of costs only in certain specified cases. In cases which are not embraced by such specific provisions, the Criminal Court would be acting without jurisdiction, if it awards costs. Chapter XXXI of the Code does not authorise award of costs.— **18 T. L. J.,** *1079*.

**4.** Local inspection by Criminal Courts can be made in appropriate cases even though an express provision relating thereto is not contained in the Criminal Procedure Code corresponding to Section 539-B of the Indian Code. The omission to make a record of the local inspection imperatively required under the British Indian Section (See Vol. I, P. 370), cannot nullify proceedings unless it is shown that prejudice has been caused thereby.— **19 T. L. J.,** *399*.

**5.** Criminal Courts are bound to hear arguments in open Court. They cannot decide cases on notes of arguments submitted by the Vakils. This practice was deprecated so early as 1068 by Criminal Circular 2 of 1068.

When a commission appointed for a local investigation makes a report, it is not competent for the Court, unless it annuls the proceedings of the first enquiry, to depute a second commissioner for the same purpose.— **19 T. L. J.,** *641*.

**6.** The fact that a warrant case was treated as a summons case, if at all, only prejudices the accused person, and therefore is no ground for interference in revision, in favour of the complainant.— **4 S. D.,** *409*.

**7.** A sentence in a Criminal Case runs only from the date of its passing. Hence, a Magistrate's discretion that the sentence passed should date from the date of arrest is wrong.— **4 S. D.** *391*.

**8.** Where a Magistrate has once issued summonses for the attendance of witnesses, he is bound to have the processes enforced before disposing of the case.— **18 T. L. J.,** *466*.

## REGULATION I OF 1068

*(Revenue Recovery).*

**1.** The provisions of Section 6 (1) and (2) and of Section 32 of the Regulation are not mere matters of form but are matters of substance. Compliance with them is an essential preliminary to a revenue sale.— **19 T. L. J.,** *589*.

**2.** Section 50 of the Regulation only lays down the procedure to be adopted and does not affect the substantive rights of the parties.

All that Section 59 means is that, in respect of revenue recoverable as 'arrears

of public or land revenue', the procedure laid down for recovery of public revenue due on land is applicable.

The dues to a temple assumed by Government from the properties held from the Devaswom can be recovered only by attaching the property of the defaulter.—
**18 T. L. J.**, *687*.

## REGULATION II OF 1068 (*Forest*).

**1.** In proceedings under the Forest Regulation, the prosecution has only to prove that the accused is in possession of 'forest produce'; and then the burden of proving that he came by it honestly is shifted on to him.— **18 T. L. J.**, *193*.

**2.** The Kanipattu tenure is of a peculiar kind. Formerly, Kanikkars were allowed to cultivate certain lands free of any tax for the services they used to render to the Sirkar in collecting honey and certain other articles from the forest. Then Kanikkars came to be paid at certain fixed rates for their services in this connection. All the same, at the time of the last Settlement, Chittas were issued to them for the holdings which they were cultivating under the old arrangement. The Kanikkars however derived no proprietary interest in the trees standing on these Kanis by the grant of the Chittas.

A Kanikkaran cutting down an Anjili tree which is included in the Reserved trees is guilty of an offence under Section 22, Clause (c), of the Forest Regulation.—
**18 T. L. J.**, *234*.

## REGULATION V OF 1071 (*Jenmi and Kudiyan*).

### Section 5.

**1.** Jenmom lands are irredeemable and non-Jenmom lands are redeemable. A melotti is not in the eye of the law a renewal. Even a renewal will not deprive the Kudiyan of a non-Brahmin Jenmi (who has been in possession on the whole for 25 years though from the date of the renewal to the date of suit, 25 years had not elapsed) of the benefit of Section 5 of the Jenmi and Kudiyan Regulation.

Lands described as obtained from Jenmis on Thettom mean lands obtained on Kanom mortgage from Jenmis.

Kudipulli Thanathu lands are Jenmom lands. A mortgage of Jenmom and non-Jenmom lands could be split up.—
**4 S. D.**, *231*.

**2.** The provision contained in Section 5 (2) would apply only to cases where the land is Jenmom land as defined in the Regulation and the same is held under a Kanapattom deed.

The above provision does not amount to a statutory bar to the creation of permanent occupancy rights as regards lands not covered by that Section.— **44 T. L. R.**, *11*.

### Section 12.

According to Section 12 of the Regulation, the Kanom tenant should give notice of his intention to surrender within 11½ years of the last renewal date. In the light of the Kanom deed in the case, he ought to give such notice at least verbally and at the latest on the last day of the expiry of 12 years, and as he did not do so, the Jenmi was not bound to accept the surrender. According to Section 17, it is the Kudiyan's duty to pay the renewal fees on or before the last day of the 12th year. Renewal fees would become payable without demand from the Jenmi on the tenant enjoying the land even one day after the expiry of 12 years without giving any notice of surrender.— **4 S. D.**, *186*.

### Section 17.

**1.** The legal representative of a deceased Kudiyan, who was no privy to the contract of Kanom, cannot be held to be personally liable for Michavarom, renewal fees and customary dues payable under the contract in the absence of proof of his possession of

the holding. Section 17 of the Regulation refers to the Kudiyan's liability for the dues on the assumption of himself being the party to the contract of Kanom. It does not contemplate the case of his legal representative, which has to be dealt with under the general rules of law relating to contracts.— **17 T. L. J.,** ***381.***

**2.** The suit was for renewal of a Kanapattom deed dated 28-10-1073 and for recovery of renewal fees and other dues. The suit was instituted on 27-12-1097. The defendants contended, *inter alia*, that the claim for renewal fees was barred by limitation. *Held.*—(1) The claim for renewal fees was within time. The Kanapattom deed did not specify the date on which renewal fees should be paid. Therefore, Section 17 of the Regulation applied, and the money did not become due till after the last day of 1085. It was contended for the defendants that, under Section 11 of the Regulation, the cause of action for the money arose on 28-10-1085. But what mattered under Article 109 of the Limitation Regulation (old), which applied to the case, was not the date of the cause of action but the date when the money became due.

(2) The rights and liabilities under a deed accrue *prima facie* on the day it is executed and not on the day it is registered.— **19 T. L. J.,** ***1139.***

**3.** See also Sec. 12.—**4 S. D.,** ***186.***

### Section 21.

**1.** The yield of Pepper vines, Cherupunna and Maravatty cannot be taken into account in calculating the enhanced Jenmi Pattom under Clause (4) of Section 21 of the Regulation as they do not come under the head of trees.

When Nadavukoor is calculated for the tenant under Clause (6) of Section 21, *i. e.*, when three-fourths of the value is fixed as due to the tenant, that becomes a debt due to the tenant payable to him in case of his liability to eviction and in lieu thereof the tenant enjoys all the trees. When this is done, all the trees become those of the Jenmi, and then it is only one-fourth of the gross yield that becomes the Jenmi Pattom. **4 S. D.,** ***112.***

**2.** For purposes of Section 21 of the Regulation, all the trees that have come into bearing after the date of the last renewal have to be taken into account. It is improper to take into account only the trees that have been yielding for 12 years and more or to allow enhancement only with reference to the trees that were bearing on the date of the last renewal.

Section 21 requires a deduction to be made on account of Nadavukur. The expression "Nadavukur" would include the cost of conversion of a paddy land into a garden land in which the trees are planted. The cost has to be dealt with in the same manner as the cost of planting the trees, and the Kudiyan is entitled to a reduction of the interest on this amount from the Pattom in determining the amount of enhanced Michavarom payable by him. The rate of interest would, according to Section 21, depend upon the agreement between the parties or the custom relating thereto in the locality. It is improper to ask the Jenmi to pay the tenant the cost of conversion. The amount has to be included in the Kanom amount to be specified in the renewal.

The average annual yield mentioned in Section 22 (*b*) of the Regulation means the gross produce from the trees and not the net annual yield.

In assessing the rate of Pattom according to Section 22 (*b*), there is no warrant for the view that it should be fixed on the basis of Payattupattom where there are trees. The Payattupattom referred to in the Section relates only to the probable yield of the cultivation of cereals on the property and not to the produce from the trees. It is not correct to interpret the expression Pattom occurring in the Section in any sense other than that contained in the definition of the same in Section 3, Clause (9), of the Regulation.—**45 T. L. R.,** ***5*** **(=19 T. L. J.,** ***52*****).**

### Section 22.

See Sec. 21.—**45 T. L. R.,** *5.* (=**19 T. L. J.,** *52*).

### Section 44.

Section 44 of the Regulation applies only where the tenant satisfies both the negative conditions presented therein, *viz.*, that there has been no payment of Michavarom and that there has been no renewal.—
**17 T. L. J.,** *606.*

### Other Cases.

**1.** The suit was for redemption of a mortgage. In special appeal, the contentions were that (1) in estimating the improvements, the Judge should have made the Kudipattom and not the Jenmipattom the basis of his calculation, and (2) the mortgagee's share should be 3/4 and not 1/4 as fixed by the Judge. *Held*—As between mortgagor and mortgagee the valuation of improvements must be according to the gross rental of the same, *i. e.*, the gross pattom at the time of valuation, such gross pattom being different from the Jenmipattom which in no case can exceed 1/4 of the gross yield. (See Section 22 of the Regulation).

The mortgagee's share, (*i. e.*, 1/4 or 3/4) is governed by the usage of the locality.—
**4 S. D.,** *161.*

**2.** Karaima imports a permanent tenure. A Karaima Samudayam is a hereditary Samudayam. A Kuzhi Karaima tenure is a permanent improving lease. An Era Karaima lease is a permanent lease subject to the payment of Era Michavarom. When lands are held on Karaima tenure, so long as the tenants are able and willing to perform the services, the tenure cannot be put an end to whether the services were required or not.— **4 S. D.,** *294.*

**3.** Mortgages of Jenmom properties by Proclamation Jenmis *prima facie* imply an irredeemable Kanom tenure.

Though Erakaraima falls short of an absolute sale, it is practically one.

The Jenmi who has executed an Erakaraima deed has no right to grant renewals and could not evict on the ground of the non-payment of the nominal rent reserved to him. A Kartha, the transferee of all the rights of the Namboori Jenmi is bound to respect all the legal contracts entered into by the Namboori with his Kanom tenant prior to the date of transfer.—
**4 S. D.,** *54.*

**4.** A vendee under an invalid sale-deed is interested in the payment of renewal fees to the Jenmi and is entitled to add that sum to the amount chargeable in his favour when the sale deed is set aside.—
**4 S. D.,** *73.*

**5.** A suit was brought on 18-2-1081 for renewal of a Kanom deed of 16-12-1057. The decree was passed on 20-8-1082, *i. e.*, after the renewal deed sued for became useless and after a new cause of action accrued to plaintiff for a fresh renewal deed. *Held.*—The suit which was brought to get a renewal deed accepted for the 12 years' term between 1069 and 1081 could not be converted into a suit for obtaining a renewal deed accepted for a different term of 12 years between 1081 and 1093, simply because the former term expired pending suit.

Where no relief remains to be granted on the old cause of action and the relief further claimed has nothing to do with the old cause of action but is based on a new and distinct cause of action, the new relief claimed on appeal could not be granted.—
**4 S. D.,** *325.*

**6.** The plaint properties belonged to the second defendant's Brahmaswom and were held on Kanom by the first defendant. The latter hypothecated, and later on sold, the properties to the plaintiff. Subsequent to

the hypothecation but before the sale, the second defendant had filed a suit against the first defendant for redemption of the properties and that suit was decreed in terms of the plaint. The plaintiff brought the present suit to recover the amount under the hypothecation from the plaint properties, and the first defendant alleging that the finding in the redemption suit that the first defendant had only a redeemable mortgage right over the properties could not bind him. It was accepted as common ground that the sale became infructuous by reason of the pendency of the redemption suit. *Held.*—(1) The finding in the redemption suit that the Kanom was a redeemable one cannot bind the plaintiff who had acquired a mortgage right to the properties before the date of that suit. The plaintiff could not be deemed to be a person claiming under the first defendant within the meaning of Section 9, C. P. C. (old).

Stipulation for payment of renewal fees or proof of such independent payment is essential to constitute an irredeemable Kanom demise in the eye of the law.

Clause (8) of the Royal Proclamation of 1042 applies only to fresh leases or mortgages after the date of the Proclamation and not to transactions anterior to the date of its issue.

There is no presumption that old mortgages executed by Royal Proclamation Jenmies are irredeemble. He who wishes to derogate from the normal incidents of ownership ought to be required to establish his contention. When the legal relationship between the parties is governed by the terms of a document, the document is the primary evidence of the relationship and its incidents must be gathered by the interpretation of the same.

The expression "Thettam" occurring in old land records has no such settled significance as Kanom. It cannot be accepted as evidencing a Kanom demise relating to the lands comprised in the same. The description has to be put down as indicative only of a derivative title from the Jenmi concerned.

(2) There was no merger of the hypothecation in the sale, and the plaintiff is competent to fall back upon the hypothecation, the sale having become infructuous by reason of the pendency of the redemption suit.

The principle relating to merger should receive a liberal application and not restricted to the state of affairs at the time of the sale. The rule should be made more comprehensive so as to bring about a merger only in cases where expressly or by implication, an intention to extinguish prior rights is made out.—**43 T. L. R.,** ***190***
**(=17 T. L. J.,** ***456***).

**7.** In the absence of a specific provision to that effect, a sale or gift of property charged with Thiruppuvarom, does not include the transfer of the right to Thiruppuvarom.

Thiruppuvarom right is not an ordinary incident of ownership.— **18 T. L. J.,** ***47.***

**8.** Even if a tenant has acquired a permanent right of occupancy by the operation of the Jenmi and Kudiyan Regulation, there is nothing in law to prevent him from agreeing with the Jenmi to hold the land on any other terms.

The fact that the Regulation provides for the tenant surrendering the holding on certain conditions does not mean that, in other circumstances, if both parties agree, a surrender cannot be made. The Jenmi and Kudiyan Regulation does not take away the freedom of contract of the parties.

Where the provisions of a deed are construed to find out whether it creates a Kanom tenure under the Regulation, the fact that the term fixed in it is not the usual term of twelve years is a strong indication that the parties did not intend it to be an irredeemable Kanom.

The stipulation in the deed on the part of the tenant to surrender the property at the end of the term fixed if he defaults in

the payment of rent and other dues is inconsistent with the statutory characteristic of a Kanom.— **18 T. L. J.,** *308*.

**9.** The Sirkar being primarily liable for the payment of Thiruppuvarom to the holder thereof, the ordinary incidents of a debt would attach to such liability. In the nature of the payment of Thiruppuvarom, a contract to pay up the same immediately after the harvest of the crop can be presumed, and a non-payment of the amount accruing due for the crop then, would constitute a breach of contract for which damages could with properiety be claimed in the shape of interest from the date of such accrual. It is the duty of the debtor to seek his creditor, and non-payment of the dues on this account at the proper time would justify the claim for interest upon the arrears due in this behalf. A notice of demand is therefore not a condition precedent to the claim of interest on the arrears of Thiruppuvarom.

The usual rate of interest on paddy loans which is 20 per cent. per annum has to be treated as the customary rate of interest on Thiruppuvarom.— **44 T. L. R.,** *32* (=**18 T. L. J.,** *471*).

**10.** Where in a Nerpattom deed express provision was made for the effecting of improvements and also for payment of Adukkuvathu : *Held*.—It was a redeemable mortgage. The express reference to the effecting of improvements on the property, contained in the Nerpattom deed is clearly indicative of the intention of the parties to treat the same as a redeemable mortgage. The payment of Adukkuvathu provided for in the document is not inconsistent with an intention of the kind indicated, as such payments are usually stipulated for in redeemable mortgages and even in ordinary leases in Shertallai.

The lower Courts acted rightly when they allowed compensation to the mortgagee for Lawrel, Portia and Tamarind, in the absence of evidence to substantiate the plea that these were trees of spontaneous growth.

The general rule that a deduction of one-half of the tender nuts found in a tree was necessary to be made towards droppings cannot be considered inflexible in the matter, as it must necessarily vary according to the locality, and other conditions which may affect the extent of the droppings.— **18 T. L. J.,** *609*.

**11.** A consideration of the whole document and the attendant circumstances shows that the document in question, which is styled a Nerpattom deed, evidences an irredeemable demise. The contention that Nerpattom refers only to a simple lease cannot stand. Even Kanom documents are used formerly to be described as Nerpattom. Further, the nomenclature used in the document is not of much significance as the whole document and the attendant circumstances have to be taken into account in determining the legal incidents created by it.

The contention that the demise in question is redeemable having been executed by a non-Jenmi cannot also stand, as the provisions of the Jenmi and Kudiyan Regulation are applicable to cases like the present. The lands covered by the demise, which are Kudipulli Thanathu lands, are clearly Jenmom lands. The expression "Kudipulli" only indicates that the lands were obtained by others from Jenmis and therefore they have been lightly taxed. Such land is Jenmom holding as defined in Section 3, Clause (1), of the Regulation. Section 3, Clause (2), shows that the term "Jenmi" used there includes persons who cannot claim to be such under the Proclamation of 1042, but who had succeeded to the rights of the Jenmis over Jenmom properties in Court auction or private sale. Section 4 validates such transfers and Section 26 confers certain powers on the Kudiyan in such cases.

Payment of Adukkuvathu is an essential characteristic of irredeemable Kanoms relating to Jenmom lands.— **18 T. L. J.,** *766*.

**12.** It is not open to a Kudiyan who admits the Kanom tenure to resist the Jenmi's

claim to the renewal. To the liability to take such renewal is also attached the liability to take the renewal fees and the other customary dues. If the terms of the contract regarding such dues are not proved or if they are not gatherable from the terms, the same will have to be settled according to the custom prevailing in the Jenmi's family or the locality.

Where the Kanom tenure is admitted or a presumption of such tenure arises from the facts of the case and where the terms of the Kanom are peculiarly within the knowledge of the Kanomdar who is in possession of the title deeds, it is wrong to lay on the Jenmi the entire burden of proof regarding the terms. In such a case, the Kanomdar may be required to prove the terms of the Kanom.— **18 T. L. J.,** *920.*

**13.** Although ordinarily Olappanom and Oppusuchi are used as synonymous terms, where there is proof of a special contract or custom, both the dues should be awarded.— **18 T. L. J.,** *1324.*

**14.** As Kudappana trees are ordinarily grown with care, the award of compensation for these trees cannot be considered to be improper.

Betel vines are not permanent improvements in the property. No compensation can be awarded towards their value.

Black wood trees being Royal trees, it is not probable that they are trees planted and grown with care. The award of compensation for these trees is consequently improper.—

**46 T. L. R.,** *27* **(= 19 T. L. J.,** *156***).**

**15.** The suit was to recover Thiruppuvarom charged on the plaint properties belonging to the defendant and assigned to the second defendant. The Thiruppuvarom was claimed at the rate specified in the Chitta, and was valued at the nirak rate on the date of suit. On special appeal by plaintiff: *Held,*—The ruling in 16 T. L. J., 121 was not applicable. The nature of the Thiruppuvarom right appeared to be this. The Government, for reasons which it was immaterial to consider and which might vary in different cases, granted a part of the tax due on a property to a third party. The Sirkar also granted the lands to a Pattadar directing him to make the above payment annually to the holder of the Thiruppuvarom right and the Pattadar by accepting the Pattah might be regarded as accepting the liability to make the payment at the first rate. Assuming the Pattadar was liable to be sued at all, he was liable to be sued for the full amount to which the latter was entitled.—

**19 T. L. J.,** *345.*

**16.** The question whether the terms of any particular document have the effect of creating an irredeemable tenure is a question of construction.

If there is evidence to show that the property was at the time represented to be Jenmom and the transaction entered into on that basis, it is doubtful whether the plaintiff can resile from that position and contend that the legal incidents of the Jenmom property are not claimable with respect to the mortgage holding. A stipulation for renewal on payment of Adukkuvathu in regard to property described as a Jenmom holding will in law evidence the creation of an irredeemable mortgage, and if a person wants to make out that the land was not intended to be treated as a Jenmom holding as described in documents, it lies on him heavily to do so.

The right of creating permanent occupancy rights was not created for the first time under the Jenmi and Kudiyan Regulation, as the Proclamation of 1042 expressly declared permanency with respect to such alienations.— **19 T. L. J.,** *760.*

**17.** The rule that Olappanom and Oppusuchi are not simultaneously awardable to the Jenmi will hold good only in the absence of a special contract or custom to the contrary.

The non-mention of Aravakasoms and other customary dues in deeds executed before the date of the Jenmi and Kudiyan

Regulation would not exonerate the tenant from liability to pay them.— **19 T. L. J.,** *973.*

**18.** See also Settlement Proclamation, 1061.— **19 T. L. J.,** *1394.*

## REGULATION IV OF 1073.
## (*Abkari*).

### Section 19.

**1.** The suit was for damages by the contractor against his sub-contractor for non-purchase of spirits. The contractor had not obtained a license from Government for the transfer of the shops in question to defendant. *Held.*—As Section 19 of the Regulation imposes a duty on the lessee or assignee to obtain a license and as license was not obtained, the agreement was illegal.— **4 S. D.,** *349.*

**2.** Licensed sub-lessees of an opium and bhang contract cannot legally and validly take a third person as partner without getting the permission of the Peishkar. 'To hold that a person who has not got a license could still be partner with the one who has a license would enable the unlicensed partner to evade the liability intended by the law to be cast on persons carrying on Abkari business' (F. B.).— **4 S. D.,** *359.*

### Sections 27 and 28.

**1.** Whenever an Abkari Officer whose monthly salary is not less than Rs. 20 has reason to believe that an offence under Sec. 51, 53 or 54 of the Abkari Regulation has been committed and that the delay occasioned by obtaining a search warrant under Section 27 of the Regulation will prevent the execution thereof, he may, after recording his reasons and grounds of belief enter and search any place. But omission on the part of the Officer to record his reasons or grounds of belief makes the search illegal.

In prosecutions under the Abkari Regulation where the search is illegal, the Courts cannot take advantage of the presumption allowed by Section 60 of the said Regulation. But in a case where the search is illegal, an accused should not go unpunished if the guilt can be established by reliable independent evidence and without invoking the presumption allowed by Section 60.— **43 T. L. R.,** *148* (=**17 T. L. J.,** *189*).

**2.** The Abkari Officer who elects to search a place for discovery of contraband article without the Magistrate's warrant in execution of his powers under Section 28 of the Abkari Regulation can do so only on certain conditions, the chief of which being that he should, before the entry and search, record the reasons and the grounds for his believing that an offence under the Regulation has been committed and that the delay in obtaining the search warrant from the Magistrate would prevent the execution thereof. Section 28 of the Regulation does not require that the preliminary record contemplated therein should be prepared only after going to the place of search. Provided that it was prepared before entry in the place of search, it is immaterial where and at what distance therefrom it was done. No hard and fast rule can be laid down as to what facts have to be recorded by an officer who acts under Section 28 of the Regulation to constitute his reasons and grounds for believing in the existence of the conditions stated in the Section. It depends upon the circumstances of each case.

It may however be generally stated that the record must be one from which the Court may gather that the Officer acted with due regard to the exigencies of the case and not arbitrarily without discrimination. Having regard to the principle underlying the provisions of Section 390-A of the Criminal Procedure Code, which should, under Section 5 of the Code, be taken to be applicable to the trial of the offences under the Abkari Regulation, it is doubtful if the Officer who proceeds for search under Section 28 of the Regulation could be required

to state in his record the sence of the information on which he acted.

**43 T. L. R.,** *205* (=**17 T. L. J.,** *534*).

**3.** The suit was on a promissory note executed by defendant to plaintiff. Plaintiff and defendant entered on a partnership agreement, even before the auction sale of the shops, to conduct arrack shops as licensees under the Abkari Act. The sum under the pro-note was arrived at on a settlement of accounts between them, on dissolution of the partnership. It was contended that the promissory note being on an illegal consideration, the claim on it was unenforceable. *Held*.—The preponderance of authority in British India is in favour of the view that the taking in of a partner, by a licensee under the Abkari Act, does not *per se* amount to a transfer of the license or of any portion of the privilege granted thereunder. It is illegal only if the taking in of a partner amounts to a transfer of any portion of the privileges conferred by the license. In the case, the partnership agreement did not amount to a transfer of the privilege granted by the license to each, nor did it come under the prohibition contemplated by Clause 29 of the license granted to them under the Abkari Regulation. Consequently, the consideration for the promissory note was not illegal or unlawful.—
**43 T. L. R.,** *381* (=**17 T. L. J.,** *874*).

**4.** See also Regn. V of 1067, Sec. 224.—
**18 T. L. J.,** *1330*.
**19 T. L. J.,** *809*.

### Section 60.

See Secs. 27 & 28.—**43 T. L. R.,** *148* (=**17 T. L. J.,** *189*).

## REGULATION I OF 1074.
## (*The Penal Code*).

### Section 28.

For invoking the aid of Section 28, it has to be made out that there has been a common intention between the real perpetrator of the act and the persons against whom a vicarious liability is sought to be imposed and that the act complained of is done in furtherance of the common intention. Under Section 141, a vicarious liability is imposed in cases where the act is done in prosecution of the common object of an unlawful assembly. The difference in the wording would indicate that in the latter case the offence committed need not be the offence intended. To make out this, the best evidence would be evidence of conspiracy or in its absence, evidence of what actually took place and what must have appeared to accused at the time as the natural consequence of his conduct.— **17 T. L. J.,** *819*.

### Section 34.

The word 'offence' is defined very widely in Section 34, as a thing punishable under the Penal Code or under any other special or local law. The definition of the word in Section 2, Clause (12), of the General Clauses Regulation is also wide.

Therefore, the principle underlying the provisions in Chapter IV, General Exceptions, is likewise applicable to the offences under any special or local law.

The decision of the Madras High Court which takes a different view (15 Cr. L. J., 171) cannot apply as the definition of 'offence' in Section 40 of the Indian Penal Code is not as wide as in the Travancore Penal Code.

The argument that none of the provisions in the General Exceptions can be applied to the offences other than those under the Penal Code would, if accepted, lead to anomalous results.

The word 'accident' in Section 69 does not mean a mere chance. It means an unintententional and unexpected act. The word implies the idea of something not only not intended but something which was so little expected that it came as a surprise. So the term 'misfortune' means the same thing—with this superadded that it was as unwelcome as it was unexpected.

Sudden illness on account of which a person fails to comply with the provisions of Section 14 (1) of the Chitties Regulation comes within the meaning of 'accident or misfortune,' and is a valid excuse.—
**18 T. L. J.**, *236.*

---

### Section 53.

See Regn. V of 1067, Sec. 19.—**4 S. D.**, *401.*

---

### Section 69.

See Sec. 34.— **18 T. L. J.**, *236.*

---

### Section 141.

See Sec. 28.— **17 T. L. J.**, *819.*

---

### Section 145-A.

Section 174 of the Criminal Procedure Code only requires that complaints in respect of offences under Section 145-A of the Penal Code should be made "by order of or under authority from" Government. The Section does not require even a written authority for the institution of the complaint ; much less does it contemplate any particular form in which the authority has to be conveyed to the officer who is to set the law in motion, nor, that the order directing the prosecution should be as full and detailed as the complaint itself.

And so where, as in the case, the complaint is filed on the authority of an order which directs the prosecution of the editor and publisher of a newspaper for an offence under Section 145-A in respect of a particular article specified by title and the date of the issue of the paper in which it appeared, the provisions of Section 174 are substantially complied with, even though the order does not specify the names of the communities between whom the accused person has attempted to stir up feelings of enmity or hatred.

The true test to be adopted in judging whether the article is calculated to promote feelings of enmity or hatred between class and class is the one laid down by Justice Davar in 10 Bom., 848, in the following words :—"The true test you have to apply is to look at the various articles that are placed before you and judge of them as a whole and judge what effect they produce on your minds in the first instance, judge whether they are calculated to produce feelings of hatred, contempt or disloyalty or enmity towards Government in the minds of the readers of those articles, and judge for yourselves whether the language like this used by the accused is or is not likely to inflame" one class against another, "judge of human nature as human nature is ; judge by ordinary sound common sense and then return a verdict."

The language of Section 145-A implies that there should be present the intention to promote enmity between class and class. But the intention has always to be gathered from the language used. In so doing, the question to be considered is where the passages are such as in fact excite or disclose an attempt (which implies intention) to excite hatred or enmity towards any class ; and the publisher must be deemed to intend that which is the natural result of the words used, having regard among other things, to the character and description of that part of the public who are to be expected to read the article.

The article should, however, be read in a free, fair, and liberal spirit, and undue importance should not be attached to any strong word or objectionable passage used here and there in the article.

As the liability of the publisher for an offence under Section 117 or 145-A arises from the fact of his having published the offending article, other articles or letters (by whomsoever written) published by him in other issues of his newspaper having the same tendency to promote class hatred may well be admitted (on formal proof of publication) to show the intent of the publisher. In such cases the intention of the writer as gatherable from the language of the article must be deemed to be the intention of the

publisher as well. It is anomalous to hold that the intention of the publisher can be inferred only from articles proved to have been written by him when his liability is not sought to be based on the fact of his having written a particular article but on the fact of his having published it.

The Explanation to Section 145-A saves only criticisms made without malicious intention and with an honest view to remove matters which are producing or having a tendency to produce feelings of enmity or hatred between classes of people. The article in question which is couched in a language highly offensive as a whole and in a tone exceedingly provocative and which tells the Hindus among other things that it is high time they combine in order to smite and put down "this hellish and fearful Christian Commotion and rid the country of the same," cannot be viewed simply as a catalogue of the grievances of the Hindus with an honest desire to get them removed.

A publicist is free to discuss questions of public interest with severity and if he so cares even with unfairness and unreasonableness. But he must write without malignity and without imputing corrupt or malicious motives. "Where vituperation begins, the liberty of the Press ends".

The mischief sought by such indecent and unhealthy publication may be quite out of proportion to the status and circulation of the newspaper and to the title of the editor and publisher as a sober journalist. It is almost a truism that influences for evil spread more rapidly than influences for good. The limited circulation of the paper and the obscurity of the editor and publisher cannot, therefore, be treated as extenuating circumstances in the sentence to be passed.— **43 T. L. R.**, *79* (=**17 T. L. J.**, *81*).

## Section 172.

See Regn. V of 1067, Sec. 360.— **43 T. L. R.**, *209*.

## Section 175.

If all that is done is to indicate to the Police the person whom the complainant has reason to suspect of the commission of the offence, that cannot be treated as amounting to charging the person with having committed the offence of instituting criminal proceedings against that person under Section 206.

Section 175 covers wider ground than Section 206. False information given to a Police Officer, even though where it does not amount to "instituting criminal proceedings" against a person may be punishable under Section 175.— **18 T. L. J.**, *284*.

## Section 187.

The accused gave one statement as P. W. 5 before the Magistrate, and a totally contradicting and irreconcilable statement before the Sessions Court. The Sessions Court ordered his prosecution for perjury. The Sessions Judge acquitted the accused on the ground that his statement in the Sessions Court had been accepted as true by the High Court and that therefore the accused cannot be convicted of perjury in having made that statement. On appeal against the order of acquittal: *Held.*—The charge does not depend upon the truth or falsity of the statement before the Sessions Court alone but upon the totally irreconcilable character of the two statements made by the accused on oath, one or other of which must be false.

The circumstance that the second statement was upheld to be true by the High Court does not of itself make the prosecution inexpedient on the ground that such conviction would deter persons from stating the truth subsequently. The balance of expediency is difficult to determine. It would be a mere fact of conjecture, whether more harm would be caused by prosecuting such delinquents or by letting them go free on the doubtful ground that the subsequent statements are true.

*Quaere.*—Whether a prosecution is desirable when a false statement has been corrected immediately or in the course of the same deposition.— **18 T. L. J.,** *1339.*

### Section 206.

See Sec. 175.—**18 T. L. J.,** *384.*

### Section 226.

See Regn. V of 1067, Sec. 360.— **43 T. L. R.,** *209.*

### Section 281.

See Sec. 339.—**18 T. L. J.,** *41.*

### Section 293.

A Chitty scheme consisted of 400 tickets. Each of the subscribers had to pay one rupee per drawing, the tickets being liable to be prized by taking lots at every drawing. There were to be 100 drawings. The subscribers who got prizes from the 1st to the 30th were entitled to Rs.40 each, those from 31st to 50th Rs. 55 each, those getting from 51st to 70th were to get Rs. 75 each, and those from 71st to the last Rs. 110 each. The unprized subscribers at the last drawing were to be paid Rs. 110 each. The prized subscribers were declared liable to pay one-fourth rupee for every ticket prized by them for each drawing, the balance three-fourth rupee being given credit to out of the interest realised on the amount available with the foreman at every drawing, which sum was agreed to be lent out to the subscribers with interest at 12 per cent. per annum on their furnishing security. The foreman of this Chitty scheme was convicted by the lower Courts under Section 293, for keeping an office for the purpose of drawing a lottery. On revision petition put in by him: *Held.*—The scheme is not a lottery, and the accused is not guilty of any offence.

The main features of this scheme are:—(1) None of the subscribers lose any thing, though there is the element of chance in winning prizes. (2) There is the provision of using a portion of the collections for each drawing for giving loans to subscribers. (3) The prizes vary in amount; the value increasing in a certain definite proportion to the number of drawings for which the winner has subscribed.

The essential characteristics of a wagering contract are:—(1) One party is to win and the other party is to lose upon a future event which at the time of the contract is of an uncertain nature. (2) The winning or losing must depend entirely upon chance and not on the exercise of any skill on the winning party. (3) The loss of profit or interest is not treated as the contemplated loss.

The inequality found in the position of the parties to the scheme (by some drawing money early and thus being in a position to make larger gain by interest, while others draw late and lose interest), ought not to be taken into account. Loss of interest is not loss strictly so called. It may be failure to make a profit. It cannot be said that any one is bound to earn a particular rate of interest and that not earning a particular rate is loss.

It is immaterial that the foreman is enriched by an enormous share realised as interest on the subscribers' moneys received by him; and the earlier prizemen get prizes out of all proportion to their contributions at the expense of the later subscribers.

"So long as the getting back the actual amount of subscription is always assured, the interval of time, however long it may be, is immaterial and it cannot be said any subscriber loses (F. B.).—

**44 T. L. R.,** *89.*(= **18 T. L. J.,** *575*).

### Section 299.

1. The benefit of Exception 1 to Section 299 could be given only in cases where, as the result of sudden provocation, the offender has lost all power of self-control. Such loss is not a necessary consequence of anger

or other emotion. It has to be shown "not only that the act was done under the influence of some feeling which took away from the person doing it all control over his actions but that that feeling had an adequate cause."

The absence of motive, though ordinarily a strong circumstance to be taken into consideration in the weighing of the evidence, cannot conclusively establish the innocence of the accused.

The imposition of fine under Section 301 is not mandatory, but only discretionary. The expression "shall be liable to fine" does not amount to a mandate in the matter.— **19 T. L. J.**, *99*.

**2.** Exception IV to Section 299 deals with a case of provocation not covered by Exception I. Though in both the cases there is the absence of premeditation, there is a total deprivation of self-control in cases falling under the 1st Exception, while there is in those falling under Exception IV "that heat of passion which clouds men's sober reason and urges them to deeds which they could not otherwise do". The injury done is not the direct consequence of the provocation.

The statement of a prisoner may be considered to be a piece of evidence in the case as the provisions of law deny him the opportunity of going into the box and swearing on his own behalf.

The weight to be attached to the statement will of course depend on the other circumstances proved in the case.— **17 T. L. J.**, *813*.

**3.** The right of private defence would extend to the causing of death, in cases of assault as may reasonably cause the apprehension that death or grievous hurt will be the consequence of such assault. It is a reasonable apprehension of the specified classes, to himself or some other person, and not actual injury that has to be made out. "Every allowance should be made for one who with the instinct of self-preservation, strong in him, pursues his defence a little further than to a perfectly cool by-stander would seem absolutely necessary. The question in such cases will be not whether there was an actually continuing danger, but whether there was a reasonable apprehension of such danger."

It is open to the accused to set inconsistent pleas such as that it was some other person that caused the injuries in question or that he caused the injuries in the exercise of the right of private defence. Even if the plea of private defence had not been specifically set up, it is open to the accused to entertain at any time the plea of self-defence and seek to give effect to the same if, from the prosecution evidence, the same could be substantiated.—**43 T. L. R.**, *268*.

### Section 301.

**1.** The accused, a young man of 23 murdered two innocent boys aged 11 and 12, after decoying them with the promise of giving them jaggery and nuts, with the object of getting the ornaments worn by the boys. The Sessions Judge sentenced the prisoner to death. *Held* (by the majority, Ramachandra Rao, J., dissenting).—The sentence of death was the proper sentence, even though the evidence against the prisoner was purely circumstantial.

*Per Sankara Menon, J.*—Persons who murdered for the love of lucre or those who inveigle their victims with their confidence and then murder them, are instances of execrable beings, whom the Court considers its duty to society to rid them. In such cases, therefore, the sentence of death is the proper sentence to be awarded.

Unexplained possession of jewelry of the murdered children shortly after the murder taken along with other circumstances proved in the case is good evidence that the accused is guilty of murder.

*Per Ramachandra Rao, J.*—To award the sentence of death against the prisoner when the evidence is circumstantial only would be going against the 'traditions and precedents of the High Court. The usual and

better course, therefore, is, in such cases, to sentence the prisoner to rigorous imprisonment for life. Extreme youth is also another ground for withholding the extreme penalty, for a youthful offender may still be reformed.

*Per Sadasiva Iyer, C. J.*—The safest course in regard to appropriate punishment in any particular case is to decide each case on its own merits without much reliance on previously decided cases which are supposed to be analogous. The extreme youth or the extreme old age of the culprit is sometimes treated as a ground for not inflicting the death penalty, but this also cannot be raised to the level of an invariable rule.—

**4 S. D.,** ***416.***

2. Although Section 75 attributes to a drunken man the knowledge of a sober man when judging of his action, it does not give him the same intention; and therefore drunkenness or a state of intoxication affords a sufficient excuse for not exacting the extreme penalty of the law.

Section 301 imperatively lays down that the sentence to be awarded, for the offence of murder should be either death or life imprisonment. A sentence of three years' rigorous imprisonment is therefore wrong.—

**17 T. L. J.,** ***301.***

3. See also Regn. V of 1067, Sec. 20.—

**18 T. L. J.,** ***621.***

### Section 304.

Where the prisoner's negligent act or omission is the proximate and efficient cause of death, the fact that the deceased himself was negligent and so contributed to the accident or other circumstances by which the death was occasioned does not afford a defence to an indictment for murder.

The distinction between rashness and negligence is this—"Culpable homicide is acting with the consciousness that the mischievous and illegal consequences may follow but with the hope that they will not and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite the consciousness. Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent on him and that if he had, he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection."

What will constitute such negligence as will give rise merely to a civil liability may not be sufficient to justify a conviction under Sections 304, 334 and 428. But the only difference is that it is the duty of a Court in the latter case to scrutinise the evidence with the greatest care to see if there has been negligence and if such negligence has resulted in the death of a human being.—

**19 T. L. J.,** ***257.***

### Section 307.

See Regn. V of 1067, Sec. 20.—

**18 T. L. J.,** ***621.***

### Section 339.

There must be complete obstruction in order to constitute the offence of wrongful restraint under Section 339.

Where way is not alleged to a public one, Section 281 is not applicable.—

**18 T. L. J.,** ***41.***

### Section 341.

The chief ingredient of the offence under Section 341 is the voluntary obstruction caused to any person in such a manner as to prevent that person from proceeding in any direction in which he has a right to proceed. In the absence of this element, preventing a person from building a step or a wall does not amount to the offence.—

**4 S.D.,** ***426.***

### Sections 352 and 453.

Where an accused person was convicted of having entered the complainant's house,

dragged him out and beat him: *Held*,—The award of separate sentences for the offences was illegal.— 4 S. D., *403*.

---

### Section 361.

In a case of kidnapping, the Magistrate has no jurisdiction to pass any order as to the custody of the minor alleged to have been kidnapped.— 4 S. D., *415*.

---

### Section 366.

For constituting an offence under Section 366, the following essentials are necessary:—(1) The person kidnapped was a minor at the time of the removal, *i. e.*, under 16 years of age or she was insane, (3) Such a person was in the keeping of a lawful guardian. (3) The accused took or enticed such person. (4) He took so without the consent of the lawful guardian. (5) At the time of the removal, the accused intended or knew that the woman would be compelled to marry any person against her will or that she would be forced or seduced to illicit intercourse.— 17 T. L. J., *415*.

---

### Section 378.

There is a property in letters even apart from the copyright in them. Letters therefore come within the definition of property in Section 378, and the offence of theft can be committed in respect of them.—

17 T. L. J., *530*.

---

### Sections 403 & 406.

See Regn. V of 1067, Sec. 392.—

18 T. L. J., *203*.

---

### Section 426.

1. The removal by the accused from property in his possession of a structure put up by the complainant there does not amount to the offence of mischief.—

18 T. L. J., *1019*.

2. The owner of the property is entitled to deal with it in any way he chooses. Even if he destroys it or changes its situation so as to affect its utility or value, he cannot be deemed to have committed any offence unless the rights of others are infringed. His act would amount to an offence, if it is made out that the complainant's easement right over the property has been injuriously affected and also that an invasion of such right and damage to him had been intended at the time of the act. Illustrations (*d*) to (*f*) to Section 426 contain instances where a mischief could be committed with reference to one's own property (*Vide* also Explanation II).—

18 T. L. J., *1024*.

---

### Section 427.

A mortgagee cutting down trees from the mortgaged property without the consent of the mortgagor commits the offence of mischief under Section 427, even though the trees cut down were planted by the mortgagee himself.— 4 S. D., *424*.

---

### Section 436.

Straw being an agricultural produce and the staple food of cattle in this country, setting fire to a heap of straw would constitute the offence under Section 436.—

4 S. D., *398*.

---

### Section 442.

A mere knowledge that the trespass is likely to cause insult or annoyance to the owner of the property does not amount to an intent to insult or annoy within the meaning of Section 442. But where the trespasser knows that his trespass is practically certain in the natural course of events to cause insult or annoyance to the owner of the property, it is open to the Court to infer an intention to insult or annoy. It is a question of fact whether this presumption of intent is displaced by proof of any independent object of the trespass.

There is no reason to depart from the view of the law adopted in 34 T. L. R., 243

which is the same as the view taken in 41 Mad. 156.

The rule that a man must be presumed to intend the natural consequences of his acts should be regarded as a rule which should be applied in considering whether the requisite intention exists in any particular case of alleged criminal trespass. (F. B.).

*Per Joseph Thaliath, J.*—In the interpretation of penal statutes, the expressions "intention" and "knowledge" should not be taken in their purely limited sense.—

**44 T. L. R.,** *99* **(=18 T. L. J.,** *555*).

---

**Section 448.**

When a person enters wrongfully on property in the possession of another, it is to be presumed that he has the intention to annoy and therefore is guilty of trespass, unless he can prove that there are circumstances to show that this was done in good faith.— **4 S. D.** *400.*

---

**Section 449.**

Even where there is only symbolical possession, it would have the effect of actual delivery of possession in law so far as the parties are concerned, and entry upon the property or continuance in possession of the same after date of delivery of the same by the party purporting to have been ousted under the delivery kychit would clearly constitute an offence under Section 449, if committed with knowledge of delivery and the other sinister intention set out in the Penal Code.

Criminal Courts should not lightly brush aside the records relating to delivery of possession in execution of decrees of Civil Courts.— **18 T. L. J.,** *1287.*

---

**Section 454.**

A verandah is a part of a dwelling house and any entry on it, provided that it is accompanied by the requisite mental intent, would constitute house-trespass.

**19 T. L. J.,** *1361.*

---

**Section 499.**

The Section rather applies to a case where there is only a show of marriage for an ulterior and fraudulent purpose, to a marriage which is left incomplete owing to the omission of a necessary form than to a marriage which, so far as the form went, was complete.

The marriage of a minor Mahomedan girl, however regular in other respects, contracted without the consent of the lawful guardian is ineffectual in the eye of the law, and the form gone through is more or less a mock marriage within the purview of Section 499.

According to Mahomedan law, a Mahomedan girl becomes a major either on the completion of her 15th year or her attainment of the age of puberty at an earlier period.

In the absence of any specific allegation in the complaint and sworn statement that the girl had not attained puberty, the principle laid down above cannot apply.—

**17 T. L. J.,** *415.*

---

**Section 502.**

**1.** In an action for damages for defamatory words spoken or written by counsel, with or without malice, in any proceeding before a Court of law, he can claim absolute privilege and is absolutely immune from civil liability.

The rules laid down in the Penal Code for determining criminal liability cannot be extended to actions for civil wrong, as actions for civil liability and criminal liability do not for purposes of adjudication stand on the same footing (F. B.).—

**44 T. L. R.,** *375* **(= 18 T. L. J.,** *1028*).

**2.** Comments on the judgments of judicial tribunals must be fair and confined to the merits of each case. The members of

the Bar owe a duty to themselves and the Court in this respect and they ought always to be careful not to make any unfounded imputations against the tribunals of the State. If they act otherwise, they are not only liable to be hauled up for contempt but are also liable to punishment under the disciplinary jurisdiction of the High Court.— **45 T. L. R.**, *473*.

**3.** Where in a complaint for defamation, the contention for the prosecution was that, in a petition put in by the accused in the course of the trial, he had admitted the letter containing the alleged libel and that admission should be taken to relieve the prosecution from the necessity of proof on the point: *Held*.—The contention is untenable. In a criminal trial the onus of proving everything essential to the establishment of the charge against the accused lies upon the prosecution and the accused on his trial can consent to nothing so as to relieve the prosecution from the burden, unless it be a plea of unqualified confession of the guilt. In a prosecution for libel making or publication of the libel complained of is an essential fact which it is incumbent on the prosecution to prove affirmatively. Omission to do it on the part of the prosecution cannot be sought to be made up by the admission in the petition or written statement put in by the accused during the trial, of the writing which contains the alleged imputation.—
**18 T. L. J.**, *684*.

**4.** See also Regn. III of 1075.—
**44 T. L. R.**, *428* (=**19 T. L. J.**, *65*).

---

### Section 518.

Section 518 is not applicable to offences under the special laws, and therefore whipping cannot be awarded under the Section for offences under such laws. (In the case, the accused was convicted under Section 9 of the Gambling Regulation, and being a juvenile offender was sentenced to 8 stripes. The sentence was cancelled).— **4 S. D.**, *399*.

---

## REGULATION VI OF 1074 (*Wills*).

In the case of a registered Will, where there are no allegations that the Registrar was deceived or a fraud was practised on him or that he was himself a party to the fraud in getting up the Will, it will be presumed that all things that were done in his presence were duly done and in order. The burden of rebutting the above presumption will be on those who impugn the Will.

Those people alone who are enumerated in Section 5 of the Regulation, can rely on the Section and question bequests made affecting more than one-half of the property (F. B.).— **44 T. L. R.**, *144*
(=**18 T. L. J.**, *163*).

---

## REGULATION II OF 1075

## (*Negotiable Instruments*).

---

### Section 7.

See Sec. 8.—**19 T. L. J.**, *1321*.
„ 121.—**19 T. L. J.**, *253*.

---

### Section 8.

**1.** An endorsee of a promissory note after notice of demand made on maker is not a holder in due course under Section 8 of the Regulation. But such person is holder under Section 7 and he is entitled to recover the money from the maker. The rights under Section 61 of the Regulation are not affected by the circumstance that the holder is not a holder in due course.—**19 T. L. J.**, *1321*.

**2.** See also Sec. 121.—**43 T. L. R.**, *172*
(=**18 T. L. J.**, *261*).

---

### Section 28.

Section 28, read with Section 59, makes it clear that a bill or note held by a deceased person at the time of his death may be transferred by endorsement by his legal representative who obtains legal possession of the same. The widow of a deceased

Hindu, though having a limited interest in the estate, can negotiate by endosement the bid or note held by him.—

**19 T. L. J.**, *888*.

## Section 61.

See Sec. 8.—**19 T. L. J.**, *1381*.

## Section 80.

1. Section 80 clearly provides that payment, in order to discharge the liability under the promissory note, should be made to the holder of the instrument. The definition of a 'holder' in Section 7 makes the word applicable only to one who in his own name is entitled to the possession of the instrument. This definition would exclude a person who may be beneficially interested in the instrument, but whose name does not appear on it.— **19 T. L. J.**, *274*.

2. See also Sec. 121.— **19 T. L. J.**, *356*.
**43 T. L. R.**, *172*
(= **18 T. L. J.**, *261*).

## Section 82.

In the case of a promissory note payable on demand which is silent as to the rate of interest, the date from which interest has to be calculated is the date of the execution of the instrument and not the date of demand.

The date on which the sum ought to have been paid within the meaning of those words in Section 82 is the date of the execution of the note. In other words, the date of maturity of the note is the date of execution and not the date of demand.—

**19 T. L. J.**, *1316*.

## Section 84.

See Sec. 121.—**43 T. L. R.**, *172*
(=**18 T. L. J.**, *261*).

## Section 100.

Under Section 100, Clause (*c*), no notice of dishonor is necessary when party charged could not suffer damage for want of it.—

**19 T. L. J.**, *713*.

## Section 121.

1. Under Section 121, Clause (*b*), it shall be presumed that every negotiable instrument bearing a date, was made or drawn on such date. Date is not an essential requisite of a negotiable instrument, but, if it is dated, the presumption is that it was made or drawn on such date, unless the contrary is proved.

Under Clause (*g*) of the same Section, there is a further presumption 'that the holder of a negotiable instrument is a holder in due course.' But where the instrument was obtained under any of the circumstances stated in the Proviso to the Section, the burden of proving that the holder is a holder in due course is shifted on such holder.

Similar presumption should be made in favour of a holder in due course regarding the date of the endorsement in view of Clause (*b*) of the same Section.

It is not open to the maker of a promissory note payable on demand to plead payment to the promisee as against a holder in due course.

To constitute a 'payment in due course,' there must be among other things good faith and absence of negligence according to Section 9.

The maker of a note having negligently left it, with the payee, in spite of discharge, thereby enabling the latter to endorse it to an innocent person must suffer the consequences of his negligence.

Payment of the amount due on a promissory note, contemplated by Section 80, may be made not only in money, but in any other form as agreed to by the parties, such as, by setting off one debt against another.

Discharge of a negotiable instrument by payment under Section 84, Clause (*c*), would therefore include such payments.—

**43 T. L. R.**, *172* (=**18 T. L. J.**, *261*).

**2.** The presumptions that arise in cases of negotiable instruments are detailed *in extenso* in Section 121. Under Clauses (*a*) and (*e*), the only presumptions are in favour of passing of consideration and in favour of the order in which the endorsements are seen to be embodied on the promissory note. There is no presumption of genuineness of endorsements found on promissory notes.— **18 T. L. J.**, *847*.

**3.** Clause (*g*) of Section 121 has to be construed in the light of the definition of the expression 'holder' contained in Section 7. The expression 'holder of a negotiable instrument' in Clause (*g*) must refer only to the persons entitled in their own names to the possession thereof and to receive and recover the amount due thereon from the parties thereto as defined in Section 7. It cannot include any person who has custody of the note. Such a custody may be sufficient to constitute the person having it as a holder within Section 7, if the instrument is one payable to bearer. If the same is payable to order, custody of the note is perfectly immaterial and cannot constitute the custodian a 'holder.'

The case of the heir of a promisee is entirely different, as he is a person entitled in his own name by virtue of his having inherited the assets of the deceased promisee and possession thereof to receive and recover the amount under the promissory note within the meaning of Section 7.— **19 T. L. J.**, *253*.

**4.** Date is not an essential requisite of a negotiable instrument; but if it is dated, then the presumption is that it has been made or drawn on such date, unless the contrary is proved, under Section 121, Clause (*b*).

Under Section 80, the payment to constitute a valid discharge should be made to the holder of the negotiable instruments. Otherwise the party liable is not discharged from liability, unless the holder elects to treat the payment to any other person as one made to him.

After a party has once pleaded, he should not in his subsequent pleading be allowed to plead contradictory to what he had first pleaded. If, however, he wishes to alter or add to his pleading in any way, he should apply for amendment thereof, so that, in the event of his being allowed, the opposite party might have the opportunity to meet it.— **19 T. L. J.**, *356*.

### Hundi.

**1.** The person who is liable to the Bank to which a letter of credit is addressed is the grantor of the letter, and it is upon the faith of his promise that the Bank honors the drafts of the grantee. So, ordinarily, the grantee of a letter of credit does not make himself liable to the Bank to which the letter of credit is addressed by operating on it.— **19 T. L. J.**, *41*.

**2.** Whether a Hundi taken as a complete satisfaction of a debt or as a conditional payment is a question depending upon the facts of each case. The onus lies upon the person alleging that the bill operated as a complete satisfaction of the original debt, the presumption of fact being the other way.— **19 T. L. J.**, *713*.

### Promissory Note.

**1.** Where the obligation under the promissory note has already arisen and the liability to pay the amount secured by the instrument has already attached, a contemporaneous oral agreement to postpone the enforcement of the obligation by attaching a condition thereto cannot be set up. But when the liability itself does not attach until a condition is satisfied, the effect is not to make an unconditional promise conditional or to postpone the enforcement of the obligation created by the instrument, but to suspend the obligation itself till the condition is satisfied. There is no obligation, no promise to pay and no liability to pay until then. Such an agreement does not come within the mischief of Section 92 of

the Evidence Act, but is saved by Proviso (3) to that Section.— **44 T. L. R.,** *141* (=**19 T. L. J.,** *271*).

**2.** To vest the title in the indorsee of a negotiable instrument, there must be the indorsement as well as delivery of the instrument, and in the case of joint payees, the indorsement to be valid must be made by all the payees, unless the payee who indorses acts as the agent of the other under due consideration.— **19 T. L. J.,** *405*.

**3.** The transactions which took place before and after the execution of a promissory note would constitute relevant facts in the eye of the law in deciding whether a promissory note is genuine or not.—

**19 T. L. J.,** *758*.

**4.** See also page 112.—**17 T. L. J.,** *451*.
" 590.—**17 T. L. J.,** *95*.
" 1476.—**43 T. L. R.,** *281*. (=**17 T. L. J.,** *874*.)

---

## REGULATION III OF 1075 (*Vakils*).

### Sections 17 & 18.

**1.** The fact that, in Section 18, the Court is authorised, in cases where it orders the agreement to be cancelled, to fix the remuneration payable to a Vakil on a consideration of the services rendered as if no agreement has been brought into existence, would not warrant the presumption that such inquiry could be held only in cases where such agreement has been cancelled. In making a reduction under the first part of the Section, the Court is competent to examine the nature of the services rendered and fix the amount that could reasonably be awarded to the Vakil for such services.

Section 17 clearly shows that agreements referred to therein may relate to future services also. The insistence by the Vakil of the full fee agreed to by the client at the time of the commencement of the engagement cannot be said to be unlawful or unconscionable. In this view the undertaking to pay interest from the date of the commencement of the engagement cannot be held to be unconscionable or legally unenforceable.

Unless it is shown that a number of suits was taken up together on the several dates, the Vakil is entitled to be compensated separately for each.— **17 T. L. J.,** *498*.

**2.** All that Section 17 of the Regulation should be taken to lay down is that no agreement could be made the basis of an action for recovery of Vakils' fees which has not been reduced to writing as required by the Section. But in cases where there are no written agreements, an action could be maintained by invoking the aid of Sections 65 and 70 of the Indian Contract Act and seeking the application of the rule of *quantum meruit*.

The Vakil is therefore entitled to his remuneration independently of Section 17 of the Regulation.— **18 T. L. J.,** *690*.

---

### Other Cases.

**1.** A Vakil, when engaged by a client in a case, has to be taken to be clothed with complete authority over the conduct of a suit, except that he cannot set up pleas inconsistent with the pleadings filed by his client in the case. His erroneous admissions on a point of law could not, however, bind his client. His powers, unless and until the authority conferred upon him to act, plead or appear, is withdrawn, such as calling or omitting to call a particular witness, putting or omitting to put a particular question to a witness, pressing or abandoning one or more of the contentions urged by the client, and such other kindred matters which relate to the conduct of the proceedings, should remain unfettered. To insist upon specific separate authorities from the parties for these matters, would be virtually not giving effect to the power filed by the Vakil, as these relate purely to the " making, and doing and appearing " in connection with the proceedings covered by the power. An honest statement of the Vakil made at the latest stages of the suit, in the original Court or in appeal that the contentions put forward with

respect to particular acts are not pressed, made after a calm and careful examination of the evidence or a consideration of the conduct of his client disclosed in the suit cannot be regarded as *ultra vires* his authority on the ground that such statement is inconsistent with the pleadings originally filed in the case on behalf of his client. Such action of the Vakil has to be construed as 'acting' and 'pleading' within the purview of the engagement evidenced by the Vakalath. The interdict imposed on the Vakil, pointed out in 7 T. L. J., 14 : 32 T. L. R., 211 and 40 T. L. R., 245 relate only to these statements made at the earlier stages of the suit which would be inconsistent and diametrically opposed to the case put forward in the pleadings.— **17 T. L. J.,** *146.*

**2.** A Vakil cannot, without special authority from his client, make a statement to the Court giving up a substantial portion of his client's claim. So, where the plaintiff claims redemption of the property, the Vakil cannot make a statement agreeing to be satisfied with the redemption of half the property.— **17 T. L. J.,** *737.*

**3.** In an action for libel or slander for defamatory words spoken or written by Vakil or counsel with or without malice in any proceeding before a Court of law, he can claim absolute privilege and is immune from civil liability.

"The reason of the rule is that a counsel who is not malicious and who is acting *bona fide* may not be in danger of having actions brought against him. If the rule of law were otherwise, the most innocent counsel might be unrighteously harassed by suits and therefore it is better to make the rule of law so large that an innocent counsel shall never be troubled, although by making it so large, counsel are included who have been guilty of malice and misconduct." The advocate's words and acts ought only to be guided by a sense of duty to his client and "by a constant recourse to his own sense of right to guard against the abuse of the powers and privileges entrusted to him. Where he does abuse them—which should be rare—there is the Judge who is armed with ample powers to correct and check them.

The rules laid down in the Penal Code for determining criminal liability cannot be extended to action for civil wrong.

In the absence of statutory provisions, Courts have to act according to the principles of justice, equity and good conscience. This has received statutory recognition by the enactment of the Civil Courts Regulation II of 1084.

The principles of English and British Indian law and usage may be accepted as the principles of justice, equity and good conscience, so far as they may be made applicable to Travancore.

There is no reason why the Rule of counsel's absolute immunity which is sound in England and India should not be sound in Travancore as well, where the bar is highly developed (F. B.).— **44 T. L. R.,** *375*
(=**18 T. L. J.,** *1028*).

**4.** It can be taken to be clearly settled now that the provisions of the Penal Code alone would govern the nature of the privilege that could be set up by Vakils in criminal proceedings started against them with reference to statements spoken or written made by them in the course of the proceedings in which they appear in their professional capacity. The only provision of law relating to privilege applicable to such statements made by the Vakils is that contained in Exception No. II, in Section 502 of the Penal Code.

The only question for consideration to bring a case within the purview of the above exception is whether the imputation in question was made in the interests of the client. In such cases, the existence of private malice *per se* could not affect the presumption of good faith. In these matters the Court has not to conduct a meticulous examination of the circumstances and weigh statements made by the counsel, witnesses and parties in a too delicate and fine balance to see whether they have been

made in good faith, which expression signifies, as laid down in Section 46 of the Penal Code, anything done with due care and attention. If the circumstances made out that he acted in the matter with that amount of care and attention which is expected of an ordinary prudent man, he should be taken to have acted in good faith.

Legal practitioners, while having the above privileges, have their own responsibilities. The privileges they have, should, under no circumstances, be abused so as to harass and defame others by taking undue advantage of their position as advocates. It is essential that, in the interests of the integrity of their honorable and sacred profession, they should be very careful not to give rise to the faintest suspicion of a personal element in their speech or action as advocates.— **44 T. L. R.,** *428* (= **19 T. L. J.,** *65*).

**5.** In the absence of a specific order from the Court dispensing with the arguments on one of the questions raised in appeal, the omission by the Vakil to argue the same must be treated as amounting to an abandonment of the ground taken in the appeal memorandum.— **19 T. L. J.,** *937.*

**6.** A pleader has no right of retainer in monies realised by him in one cause for his dues in other causes conducted by him.

The disciplinary jurisdiction under the Vakils' Regulation may be exercised irrespective of the fact that the party may have other remedies open to him as against his Vakil.— **45 T. L. R.,** *459.*

## REGULATION II OF 1077
## *(Guardians and Wards.)*

### Section 6.

The expression "friend" means "joined to another in intimacy and mutual benevolence independently of sexual and family love." A stranger or way-farer cannot with propriety be considered to be a friend.

**45 T. L. R.,** *112* (=**19 T. L. J.,** *606*).

### Other Cases.

**1.** The Courts will scrutinise very carefully the acts of guardians on behalf of minor children. The interest of minors is most jealously guarded by Courts, and gross negligence would, so far as their interests are concerned, amount to fraud.

The failure to appeal from an adverse decision is not an index of lack of *bona fides* of the guardian. It may be the result of the exercise of a wise discretion.— **4 S. D.,** *144.*

**2.** Even a mere guardian acting *bona fide* in the minor's interests is entitled to compromise disputes and bind the minors thereby. **4 S. D.,** *271.*

**3.** It is established law that a guardian cannot bind his ward's estate except by a document purporting to bind it.— **4 S. D.,** *329.*

**4.** The Guardians and Wards Regulation contemplates only summary proceedings for the purpose of giving certain orders towards the welfare of the minor. In such proceedings, the Courts should not determine any question with reference to the title of the minor or of any other person to any property. Where the question of title to any property is raised in the enquiry under the Regulation, the Court should leave open such question to be agitated in appropriate proceedings by the guardian who may be appointed.— **18 T. L. J.,** *482.*

**5.** A petition under the Guardians and Wards Regulation by a father for his own appointment as guardian of his minor child is incompetent. The father is the natural guardian already of the child, and so, an appointment by the Court is unnecessary.— **45 T. L. R.,** *475* (= **19 T. L. J.,** *986*).

## REGULATION II OF 1080
## *(Breach of Contract.)*

**1.** When the advance paid to a workman consisted partly of cash paid to him and partly of 'Thundu money', *i. e.*, money

held to the credit of another estate in discharge of a debt which the workman owed to it: *Held.*—There was no advance within the meaning of the Breach of Contract Regulation; and the Regulation was applicable to the agreement in question.—
**4 S. D., *407*.**

**2.** The counter-petitioner entered into an agreement with the petitioner to supply coolies and received an advance. On the counter-petitioner failing to act according to the agreement, the petitioner complained under the Breach of Contract Regulation and on 22-7-1100, the Magistrate directed the counter-petitioner to perform his contract within forty-five days from date of order. The counter-petitioner failed to carry out the order within the time specified, and the petitioner moved the Court for awarding him punishment provided for by Section 6 of the Regulation. The counter-petitioner's defence was that the entire amount of the advance had been repaid to the petitioner and that no further action could be taken under the Regulation. The Magistrate accepted this plea and acquitted the counter-petitioner. On the question whether this view was correct: *Held.*—The Magistrate rightly refused to take further action.

A complainant who after the expiry of the period prescribed by the preliminary order of the Court, gets back the advance from the workman, cannot go before the Magistrate and ask him to punish the workman. The Magistrate gets jurisdiction in the matter only if there has been a wilful breach of a lawful contract by a workman who has received money in advance on account of work which he has contracted in writing to perform or get performed (*Vide* Sections 3 and 4). It follows that if any of the requisites under those Sections is wanting, the Magistrate has no jurisdiction to take action under Sections 5 and 6. The payment of an advance on account of the work to be done or got done is one of such requisites.

When the Magistrate passed the order of 22-7-1100, the counter-petitioner was bound to carry out the work, as he had with him the amount of the advance. But when the Magistrate was moved to pass sentence, the counter-petitioner was not bound to carry out the work as the advance had been previously repaid; and his disobedience of the order directing him to perform the work would not therefore be illegal.

To punish him for lawfully refusing to perform the work would, besides being opposed to all principles of natural justice, be putting the Regulation to a use which it could never have been in the intention of the Legislature.— **17 T. L. J., *52*.**

**3.** *Per Chatfield, C. J.*—The security bond given by the accused should be enforced only to the extent that it would be necessary to indemnify the complainant and the Government are in no way interested in the matter.

*Per Joseph Thaliath, J.*—The complainant is not entitled to get anything out of the amount realised from the surety and the said amount should be credited to the Government.

On this difference of opinion, the case was referred to Mr. Justice Subramony Iyer who agreeing with Mr. Justice Joseph Thaliath, *Held.*—The Sirkar is entitled to the amount of the bond on forfeiture and the complainant has no right to any portion of it.—**44 T. L. R., *233* (=18 T. L. J., *338*).**

## REGULATION III OF 1082
### (*Steam Boilers and Prime Movers.*)

A complaint was made to the First Class Magistrate of Devicolam by the Police Inspector of the place that the accused committed the offence under Section 4 of Regulation III of 1082 by using a boiler without license. The Magistrate dismissed the complaint under Section 181 of the Criminal Procedure Code on the ground that the complaint made by the Inspector of Police was neither a complaint nor a Police report as contemplated by Section 170 of that Code.

*Held.*—The complaint was a valid complaint on which the Magistrate could initiate proceedings. There was no special procedure prescribed in Regulation III of 1082 for instituting prosecutions for offences under the Regulation. The Criminal Procedure Code had therefore to be looked to for the purpose. There was nothing in Section 170 of the Code to warrant the inference made by the Magistrate that the complainant should have personal knowledge of the facts. The policy of the law seemed to be to enable the Magistrates to initiate proceedings on complaints of offences by any person, especially offences against public policy or safety or convenience of the public. In such cases as the present, it was the duty of the Police to institute complaints of offences which come to their notice or knowledge.

Section 181 of the Procedure Code could not apply to a case where the Magistrate refused to take cognisance of the offence as the conditions necessary for the initiation of proceedings before him had not been satisfied. Section 181 referred only to dismissal of complaints after the Magistrate had taken cognisance of the offence and had complied with the provisions of Sections 178 and 180.— **45 T. L. R.,** ***22***
**(=19 T. L. J.,** ***415*****).**

## REGULATION II OF 1084.
### (*Civil Courts.*)

**1.** A suit to recover a debt advanced to the trust or by one of its employees for recovery of wages or salary due to him cannot be treated as a suit relating to the trust within the meaning of Article 17 of Schedule II of the Civil Courts Regulation. Actions falling under the above Clause should be with reference to the internal management of the trust. The classes of cases that could be brought under the above Clause should be *ejusdem generis* with the specific forms of action enumerated in the Article. Actions by a third party as a whole or *vice versa* cannot by any stretch of language be deemed to relate to the trust as provided for in the Article.— **17 T. L. J.,** ***130.***

**2.** See also Regn. III of 1075.— **44 T. L. R.,** ***875***
**(=18 T. L. J.,** ***1028*****).**

## REGULATION II OF 1087
### (*Registration.*)

**1** A mortgaged his properties to B in 1040. B in 1070 submortgaged the property to C. A obtained a decree on his mortgage in 1072 and obtained delivery of possession in execution after paying the mortgage amount to B. In the meantime, even before A's suit C had obtained a decree against B on his mortgage and had obtained delivery of possession through Court. Neither A nor C was a party to the suit of the other. In a suit by A to eject C from the property, C contended that he must be paid his decree amount. *Held.*—(1) C having failed to give notice of his mortgage to A, he cannot have any rights in the property as against A.

(2) The mere fact of registration of C's sub-mortgage would not fix A with constructive notice, and registration is notice only to persons who are in the position of a purchaser, or submortgagee, &c., who might reasonably be expected to search the registry before advancing money and obtaining a document.

(3) The fact that a decree had been passed on C's mortgage would not show constructive notice to A. The maxim that "every man is presumed to be attentive to what passes in the Courts of Justice of the State or Sovereignty where he resides" should not be pressed into service except to support the doctrine of *lis pendens.*

(4) C's remedies are only against his mortgagor, B.— **4 S. D.,** ***7.***

**2.** Where parties to a partition entered into an agreement in writing regarding the redemption of a property outstanding on mortgage that each party should pay a

moiety of the debt and redeem the mortgage and that property should thereafter be divided equally between them : *Held.*—The agreement in question was a contract or disposition affecting immoveable property, and as such its registration was compulsory.

In the case, as the list containing the agreement was not registered, it was inadmissible in evidence.— **4 S. D.**, *89.*

**3.** Registration is notice to subsequent purchaser and for that matter to all the world.— **4 S. D.**, *352.*

---

## REGULATION VI OF 1087

### *(Court Fees.)*

---

#### Section 4.

**1.** *Per Sankara Menon, J.*—Suit to set aside a decree must be brought in the Court which passed the decree or in any Court to which that Court is subordinate. Institution fee should be paid on the market value of the property where the prayer is for a declaration of plaintiff's title to and possession of it.

*Per Sadasiva Iyer, C. J.*—A suit for setting aside a decree, or bond or transaction need be brought only by a party to it. A third party who attacks it need only sue for declaration of his own title and appurtenant reliefs and to declare his title, and is not affected by the decree, bond or transaction.— **4 S. D.**, *278.*

**2.** When plaintiff sued for cancellation of a mortgage or recovery of plaint properties with mesne profits, the defendant contended that he was entitled to the mortgage amount and the value of improvements : *Held,*—The suit was apparently not one for redemption of a mortgage. It was one for ejectment. The Court fee payable was only on the market value of the property under Section 4 and on the mesne profits claimed.— **4 S. D.**, *372.*

**3.** Plaintiff sued for a declaration that an Udampadi is not a division deed, as it purports to be, but only a maintenance arrangement, and valued the relief at 2000 fs. under Article I (*C*) of Schedule II of the Regulation (1062). The District Judge returned the plaint to be amended by setting out the reliefs in unambiguous language. On appeal: *Held,*—The plaint should be so amended by setting out in unambiguous language the relief that was really sought, namely, the setting aside of the Udampadi so far as it purports to take the properties dealt with under it out of the category of properties in which the Tarwad as a whole had ownership and fixing for it the market value of the property, the right of the Tarwad whose ownership was involved.— **4 S. D.**, *378.*

**4.** In a suit for a declaratory decree in respect of the equity of redemption of properties outstanding on mortgages, the value of the subject matter within the meaning of Section 4, Clause V, of the Court Fees Regulation should be taken to be the value of the equity of redemption, and not the properties themselves or the full right in them. In fixing the value of the equity of redemption, both the mortgage money and the value of improvements should be deducted.— **18 T. L. J.**, *832.*

**5.** It is a well-recognised rule of law that the relief as set forth in the plaint should alone be looked into for purposes of determining the value of the suit for jurisdictional purposes or the amount of Court fee leviable thereon. It is one thing to construe a relief actually claimed in the plaint so as to ascertain its real scope and meaning, and having done so, to levy fees thereon, in accordance with the provisions of the Court Fees Regulation, and it is quite another thing to require a plaintiff to treat all the findings essential to the relief sought in the plaint as themselves reliefs impliedly claimed by him and then to direct that he should amend his plaint accordingly and pay additional court fees on the fresh reliefs thus introduced. The valuation of the suit could not be made to depend on questions raised by the defence which have to be determined before granting the reliefs claimed in the plaint. If the

Court considers that the relief claimed could not be granted in the absence of another distinct and independent relief, it is bound to non-suit the plaintiff in case the plaintiff fails to have his plaint amended by the inclusion of such relief. The insistence of the Court to amend the plaint against the wishes of the plaintiff is clearly unjustifiable, for the plaintiff should be left to decide what has to be done by him, the duty of the Court being to dispose of the cause, deciding on the question of the maintainability or otherwise in the form in which it is presented before it.

The expression "distinct subjects" in Section 6 of the Regulation means "distinct causes of action." A distinction has to be drawn between "cause of action" and "relief" as contemplated in Section 4 "Cause of action" would relate to the act or acts which constitute the infringement of a right forming the basis of the suit, while the expression "relief" relates to the prayer for the restoration of the owner of the rights to the position in which he was before the infringement, and if that be impossible to compensate him for the loss. What has to be considered is whether the reliefs claimed in the plaint constitute "distinct subjects" within the meaning of Section 6 of the Regulation. Separate reliefs when claimed with respect to the same cause of action are not liable to be taxed separately.

The claim for partition by metes and bounds is only a consequential relief as contemplated in Section 4, Sub-section (5), Clause (*d*), of the Regulation.—

**19 T. L. J.,** ***1340.***

---

### Sections 5 & 9.

As the law relating to Court fees now stands, a memorandum of objections relating to the mesne profits from date of plaint to date of decree is taxable with *ad valorem* fee, in view of the provisions in Sections 5 and 9 of the Regulation.

Just as a suit is taxable for the relief which is claimed as due to the plaintiff on the date of the plaint, an appeal should be regarded as taxable on the relief claimed in it as due on the date of the appeal (F. B.).— **45 T. L. R.,** ***110***

**(= 19 T. L. J.,** ***1158*****).**

---

### Section 6.

See Sec. 4.—**19 T. L. J.,** ***1340.***

---

### Section 10.

The finality contemplated in Section 10 of the Regulation cannot attach to a decison on the point of Court fee arrived at for determining questions of jurisdiction.—

**19 T. L. J.,** ***401.***

---

### Section 11.

The effect of Order XL, Rule 21, C. P. C., Clause (2), and Schedule I (1) (4) of the Court Fees Regulation is to place the respondent who has filed a memorandum of objections in the position of a cross-appellant. The expression "memorandum of appeal" in Section 11, Clause (*a*), of the Court Fees Regulation has to be interpreted as embracing the memorandum of cross objection filed by the respondent. Hence when an appeal is compromised, one-half of the Court-fee paid on the memo of objections can be claimed to be refunded.—

**18 T. L. J.,** ***834.***

---

### Schedule II.

1. Certain properties were attached by a creditor for a debt of the owner. The revision petitioner preferred a claim saying that he had a prior mortgage charge on the properties to the extent of 7000 Fs. The claim was however rejected. The revision petitioner, therefore, brought a suit to set aside the claim order, paying Rs. 10 Court fee. The Court below ordered payment of *ad valorem* Court fee on 7000 Fs. *Held* (in revision).—The petitioner's suit was to set aside a summary order of a Civil Court. The fee payable was that prescribed in Article VIII, (iii), of Schedule II, namely, Rs. 10.—

**45 T. L. R.,** ***45*** **(= 19 T. L. J.,** ***928*****).**

2. Two applications were filed before the lower Court in avoidance of two transfers made by an insolvent in a pending insolvency petition. The applications were filed as two original suits and they were allowed. The transferees of the two documents impleaded as defendants in these suits have filed appeals against the above decisions paying a Court fee of Rs. 2 in each of the cases. It was contended that the appeal memoranda have to be taxed on an *ad valorem* basis on the consideration amounts under the transfers on the ground that the decisions of the lower Court constituted orders having the force of decrees which were conclusive against the parties, and therefore sufficient to operate as *res judicata* in suits with respect to the same subject-matter. *Held.*—Neither the provisions of the Civil Courts Guide nor the Rules framed under the Insolvency Regulation warrant the treatment of the applications for annulment under Section 36 of the Insolvency Regulation as original suits. The unjustifiable treatment of the applications as plaints and numbering thereof as suits would not constitute the decisions in these cases, decrees within the meaning of Section 2 (2) of the Civil Procedure Code.

The appeal memoranda have been properly stamped under Clause VI (*b*) of Schedule II of the Court Fees Regulation.—

**45 T. L. R.,** *269* (=**19 T. L. J.,** *1190*).

---

**Other Cases.**

1. *Per Venkitarama Aiyar, J.*—In determining the nature of the suit for purposes of Court fee, reference has primarily to be made to the nature of the relief sought for. Courts should not enquire into the inner motives of litigants in deciding such questions in the light of the eventual gain to the plaintiff in the suit. The circumstance that the consideration of an issue is needed for the grant of relief claimed could not justify the treatment of the claim involved in that issue as one of the reliefs claimed in the plaint.

The actual amount claimed should be looked for determining the institution fee payable.

The deductions or amounts set off in arriving at the figure need not be taken into consideration for the purpose.

*Per Subramony Iyer, J.*—When the nature of the claim in plaint necessarily implies a definite declaration as to a claim available to the defendant on an altogether different transaction, such subject-matter must be taken into account for purposes of Court fee and jurisdiction.— **18 T. L. J.,** *701.*

2. The plaintiff sued for redemption of a mortgage. The defendant denied the title of the plaintiff and contended that the second defendant who was subsequently impleaded was the owner of the property and that he was holding the property on Kanom under him and that the value of his improvements would be Rs. 4000. The trial Court found that the plaintiff was not the owner and dismissed the suit. It recorded a finding that the value of improvements on the property was 34,000 Fs.

The plaintiff appealed to the District Court and in the memorandum of appeal took a ground against the finding of the lower Court as to the value of improvements. The Court passed the order that plaintiff was bound to pay Court fee upon that portion of the value of improvements found by the lower Court which he questioned as being in excess of the real value. *Held.*—The plaintiff need not pay Court fee on such value.

A mortgagor who sues for redemption is under the law bound to pay Court fee only on the mortgage amount however great might be the value of the improvements made by the mortgagee. If his suit is dismissed by the trial Court, his appeal is in essence a suit for redemption and on principle he should not be compelled to pay any higher Court fee than he would have to pay in the first Court.

The matter may be looked at in another way too. The decree dismissing the suit could have been passed without any finding recorded on the issue of improvements. Obviously then, there would be no Court fee in appeal on the value of improvements. If the Appellate Court found title with the appellant, it might call for a finding from the trial Court as to the value of improvements and deal with that finding in giving its decree, though no Court fee was paid in appeal on the value of improvements. The position cannot logically be different, when for avoiding the necessity for a remand, the finding is recorded, as it were, in anticipation by the trial Court.

Rule 328, Clause (3), Civil Courts' Guide has no application to the case. The direction in this Clause is meant for cases where a decree has been passed for redemption and the defendant appeals.—

**19 T. L. J.**, *811*.

## REGULATION V OF 1088
### (*Sea Customs.*)

Apart from custom or special contract, it is the duty of the charterer or other shipper, at his own expense to bring the goods to the side of the ship, within reach of her tackle, and to deliver them there to the shipowner or to his servants authorised to take delivery on his behalf.

Although, according to the practice of the shipping trade, it is usual for a shipper to take a mate's receipt and a bill of lading, they are only *prima facie* and not conclusive evidence of ownership. It is open to a consignor, even in the absence of a bill of lading, to prove his ownership of the goods, and then it is the duty of the shipowner to deliver them to him.

A bill of lading is a document embodying an undertaking by the shipowner to carry the goods specified in it on board the ship from one part to another on payment by the shipper of a specified sum.—

**19 T. L. J.**, *469*.

## REGULATION XI OF 1089
### (*Land Acquisition.*)

**1.** In assessing land under the Land Acquisition Regulation, the Court should not take into account the deterioration in value of the adjoining property by reason of the use which the land acqired is intended to be put to.— **18 T. L. J.**, *347*.

**2.** In Land Acquisition cases, the value fixed for comparatively small plots of land cannot always be taken to be a safe guide in fixing the value of large areas. When very small plots are acquired, the actual rates at which they are acquired are not properly scrutinised, the whole cost of the acquisition being small.— **19 T. L. J.**, *873*.

## REGULATION IV OF 1090
### (*Opium.*)

A reading of Sections 17 to 27 of the Opium Regulation would indicate that powers of investigating into offences under the Regulation are vested in the Excise Officers. Statements made to them are therefore inadmissible in evidence.

Orders of confiscation could be passed under Section 395 of the Criminal Procedure Code.— **45 T. L. R.**, *261*
(=**19 T. L. J.**, *889*).

## REGULATION VIII OF 1090
### (*Insolvency.*)

**Section 2** (*d*).

See Sec. 6.—**19 T. L. J.**, *113*.

**Sections 4-8.**

**1.** To the question whether more than one person could be adjudged insolvents by a single petition of the creditor, when all the four were members of a partnership: *Held.*—A single petition to adjudge more

than one person as insolvents could be declared incompatible only where suits brought against them on the transaction in question, would be bad for multifariousness or mis-joinder. Grave inconvenience would result in holding separate trials where the debt due to the petitioning creditor was a joint debt of all the persons sought to be adjudicated insolvents and where they have been guilty of joint act or acts of insolvency.

The use of the expression "debtor" in Sections 4, 5, 6, 7 and 8 of the Insolvency Regulation as also the intention of the Legislature would justify its being construed as including more than one debtor.

The provisions of the Insolvency Regulation being of an expropriatary nature should be strictly construed.

In acts of insolvency, the act of the agent would be the act of the principal, as expressly provided for in Explanation to Section 4 of the Regulation.—

**18 T. L. J.,** *600.*

**2.** A notice by a debtor that he has suspended or that he is about to suspend payment of his debts need not be in writing in order that it may constitute an act of insolvency within the meaning of Section 4, Clause (*g*), of the Regulation. It is sufficient if a verbal statement to that effect is made by the debtor to one of his creditors, if it complies with the general principles applicable to this act of bankruptcy.

The question whether a particular statement is sufficient notice that the debtor has suspended or is about to suspend payment of his debts and has therefore committed an act of bankruptcy, is always a question of fact to be decided in each case. —

**19 T. L. J.,** *1294.*

### Section 6.

The condition imposed by Section 6 (4) (*c*) for filing of a petition by a creditor is a condition precedent for filing the petition and the Section does not merely fix the period within which the creditor must file his petition.

A fair construction of Section 6 (4) (*c*) will show that it may be regarded as allowing a creditor to take proceedings in insolvency within three months of the date of the alleged insolvency of a debtor. The operation of the Limitation Regulation is, therefore, excluded, and it is a case falling under Section 10 of the General Clauses Regulation II of 1072. If on the last day of the prescribed period of three months, the Court in which the creditor should file his application is closed, the creditor will be regarded as in time, if he files his application on the next day afterwards on which the Court reopens.

The rights of an insolvent over Kandukrishi land vest on the Official Receiver, as they are property within Section 2 (*d*) of the Insolvency Regulation.

Where notwithstanding several petitions against an insolvent, there is but one adjudication on a consideration of all of them, one appeal will be sufficient and only one copy of the order complained of need be produced. The rule is not different even when the Appellate Court orders that the appeal should be split up into several for the sake of convenience.—**19 T. L. J.,** *113.*

### Section 13.

Under Section 13 of the Regulation, the Insolvency Court is empowered in appropriate cases to appoint an interim Receiver, if in its opinion such a course is desirable, necessary or expedient in the interests of justice. Inasmuch as it amounts to a dispossession of the party in enjoyment of the properties, this power will have to be sparingly exercised, and it is the duty of the Court to satisfy itself that sufficient safeguards are provided in the order of appointment of Receiver to see that the interests of all parties concerned are conserved. In view of the *ex parte* nature of the order, the strictest care has to be taken in ascertaining what the nature of the properties directed to be taken possession of is, what provisions are essential for the proper, safe and satisfactory up-keep of such properties and the safeguards necessary to be

made to see that the party behind whose back the order is proposed to be made is not damnified. The omission to advert to those matters when the order of appointment of a Receiver is made has to be characterised as grossly irregular.— **19 T. L. J.**, *994*.

### Section 14.

When a debtor files an application to be adjudicated as an insolvent, he has no doubt to show that he is unable to pay his debts. The evidence of the debtor should be accepted as true, unless the Court has reasons to think that his debts are fictitious and that he is making the application with ulterior motives.— **19 T. L. J.**, *954*.

### Sections 14 & 15.

The question having been referred to a Full Bench as to whether a debtor's petition in insolvency could be dismissed on any other ground than that the Court is not satisfied with the proof of the right to present the petition, and whether the refusal of the Court to allow examination of the debtor before adjudication was proper: *Held*.—The words "any other sufficient cause" occurring in Section 15 (1) apply only to a petition by a creditor. Under Section 15 (1), the only ground on which the Court can dismiss a petition by a debtor is where the Court is not satisfied of the right to present the petition.

The better view is that apart from Section 15 (1), the Court has no right to reject an insolvency petition on the ground that it is an abuse of process of the Court. The right to present a petition is a statutory one which should not be lightly tampered with.

Under the present Insolvency Regulation, the debtor has no doubt to state in his petition that he is unable to pay his debts. But this inability is not one of the conditions which are necessary to enable the debtor to present the petition. It may be that the petition which does not contain such an allegation could be rejected as defective in form, but as the only ground which will justify the dismissal of the petition is that the debtor has not established his right to present it, it could be not open to the Court to pass an order against him on the ground that the allegation as to inability to pay debts was disbelieved.

The creditor has a statutory right under Section 14 (2) of the Regulation. The debtor is to be examined as to his conduct, dealings and property not for the object of deciding whether his petition is to be admitted or not but in order that information may be obtained at a favourable opportunity which may be subsequently useful in the proceedings leading up to the discharge. The right is a valuable one. The time when the debtor is applying for his adjudication is a particularly favourable one for obtaining this information. It is true that, under Section 42 of the Regulation, the debtor may be called upon to appear and produce his account books, &c., at any time either before or after adjudication. But in the case of a dishonest debtor, it will be much easier to obtain his presence and assistance before he has obtained protection from arrest.

The defect of omission to give the right under Section 14 (2) cannot be said to be cured under Section 78 C. P. C., on the ground that the information which might be obtained as a result of the question disallowed by the Court would have no effect on the order of adjudication. The proceedings on an insolvency petition must be regarded as continuing down to the order of discharge (though there is a distinct stage, no doubt when the order of adjudication is passed), so that ultimately the refusal to give the creditors their statutory right under Section 14 (2) may affect the merits of the case (F. B.).—**45 T. L. R.**, *76* (=**19 T. L. J.**, *181*).

### Section 16.

1. Section 16, Clause (5), of the Regulation does not mean that the equity of redemption in mortgaged or hypothecated properties does not, on the making of an order of adjudication, vest in the Official Receiver, but that the rights of the mortgagee or hypothecatee are unaffected by the insolvency. If, before the insolvency, a mortgagee or hypothecatee had the right to be in possession or to foreclose or to claim that his debts should be realised by a sale of the property, he will still have that right after the insolvency. But the person whom he will have to deal with is not so much the insolvent as the Official Receiver in whom the equity of redemption has vested. If a suit is necessary, the Official Receiver should certainly be a party.— **19 T. L. J.**, *408*.

2. See also Sec. 29.—**19 T. L. J.**, *1369*.

---

### Section 19.

The Official Receiver is not entitled to any commission on the amount due to a secured creditor out of the price fetched by a property sold by the Official Receiver free of the encumbrance.

The Official Receiver's claim to commission is based on Rule 4 of the Insolvency Rules dated 14th August 1922 which makes it clear that the commission is a percentage 'upon the moneys from time to time to be distributed as dividends out of the estate' of the insolvent in his hands. Section 38 of the Regulation regulates the distribution of dividends. It cannot be maintained that the interest of a secured creditor in the estate is property of the insolvent in the hands of the Receiver.—**45 T. L. R.**, *64* (=**19 T. L. J.**, *878*).

---

### Section 20.

See Sec. 29.—**19 T. L. J.**, *1369*.

---

### Section 21.

1. In the absence of a statutory definition for the word "decision" in Section 21 of the Regulation, it may be taken that it includes a decision not reduced to writing.

Where therefore the Official Receiver takes possession of the estate of the insolvent and that of his minor sons, though according to the order of Court, only the insolvent's properties are to vest in the Receiver, such taking possession of the minors' shares is a decision under Section 21, which has to be set aside within the period specified in the Section.— **18 T. L. J.**, *78*.

2. See also Sec. 45.—**17 T. L. J.**, *383*.

---

### Section 28.

See next Section.

---

### Section 29.

The provisions of Section 29 of the Regulation are of an enabling nature based on the equitable doctrine of set-off, the object of which is to prevent the great injustice which would arise if the creditor were compelled to pay the *entire* amount due by him, receiving only a dividend on the amount due to him.

But it has to be remembered that this Section only lays down to what extent the creditor should be taken to have proved his debt when he claims to do so under Section 28 of the Regulation. The Section does not afford any help in the decision of the question whether, without a specific motion in the course of the insolvency proceedings to prove such debts, a set-off could be claimed. So far as creditors are concerned, the provisions of Section 16, Clause (2), peremptorily prohibit the enforcement of claims declared provable under the other provisions of the Regulation by creditors against insolvents by resorting to the ordinary Courts of the land except with the leave of the Insolvency Court. The debt due to a creditor, even if it be by way of equitable set-off, will be one provable under

Section 28 of the Regulation, and would therefore fall within the purview of Section 16, Sub-section (2). The effect of this Section would amount to an express ouster of the jurisdiction of the ordinary Courts of the land.

Section 20 (*d*) read with Section 16 (2) clearly and unmistakeably make leave of Court essential in claims by creditors provable under Section 28 of the Regulation.—
**19 T. L. J.,** *1369.*

#### Section 35.

The period of two years specified in Section 35 of the Regulation has to be computed from the date of presentation of the insolvency petition, and not from the date of adjudication.

The expression "adjudged insolvent" in Section 35 has to be construed in the light of Section 16, Clause (6).—**45 T. L. R.,** *304* (=**19 T. L. J.,** *306*).

#### Section 36.

See Regn. VI of 1087, Sch. II.—
**45 T. L. R.,** *269* (=**19 T. L. J.,** *1190*).

#### Section 39.

The wording of Section 39, Clause (2), of the Regulation seems to be clear that the allowance contemplated under it is awardable only to the insolvent and the grant is within the discretion of the Court. It is something personal to the insolvent. The allowance would subsist so long as the Official Receiver or trustee as the case may be continues in possession and the property continues to be the property of the bankrupt. It is quite difficult to suppose that a purchaser from the Official Receiver is under a liability to maintain the insolvent and his family. The mention of the family in the Section is only for the purpose of determining the rate or scale of maintenance contemplated in it. It by no means follows from the section that the members of the insolvent's family as such have any independent claim enforceable by law. Were it not so, the Insolvency Court will have to undertake many complicated enquiries foreign to the normal jurisdiction.— **19 T. L. J.,** *777.*

## REGULATION I OF 1092

### (*Companies.*)

1. The Legislature of a country is *prima facie* territorial. The meaning of that is that it is binding on the natural born subjects of the lawgiver or on those who have otherwise become his subjects. Foreigners do not, by their mere sojourn, in a country, make themselves subject to its personal laws other than Police or correctional law or laws expressly enacted to bind all those who are in fact within its territorial limits.

*Prima facie* therefore the Travancore Companies Regulation can only apply to Travancore subjects and foreigners domiciled in Travancore.

A foreign corporation properly constituted under the law of the State to which it belongs may sue and be sued in its corporate name in the Courts of other States. A fresh incorporation in the latter State is not a condition precedent for validating such suits. If therefore a corporation has, according to the law of the State in which it is formed, been given a legal status independently of its members, its corporate existence ought to be recognised elsewhere also unless the laws in force prohibit the same.

The word "Company" in Section 4, Clause (2), of the Indian Companies Act of 1913 means a body of persons associated for the purposes of business. It must be one in which its members must have a legal relation between themselves giving rise to joint rights or obligations or mutual rights and duties.

By "business" is meant anything that engages the time, attention and labour of any person. It does not refer solely to trade of any commercial nature alone.

The gain contemplated by Section 4, Clause (2) need not necessarily be pecuniary gain. Even the prevention of loss would constitute gain. The gain need not be one accruing to the association. It may be one accruing to its individual members. But the Section will not be applicable to associations whose substantial object is not the acquisition of gain even if such gain accrues incidentally or by reason of its subsidiary provisions.

An unregistered association cannot be considered to be a corporation within the meaning of Section 415 C. P. C. [=Or. XXIX, r. I], and it could not therefore sue in its own name through its Officers.

Where the plaintiff is himself a member of the unregistered body, he can sue in representative capacity under Section 26 C. P. C. Where the notice under Section 26 has not been given prior to the institution of the suit, such omission is not a fatal defect, and it can be cured by subsequent notice.— **18 T. L. J.**, *1054*.

**2.** The ordinary rule is that the Court will not interfere in the internal management of the company. This rule, however, is not a hard and fast one. A share-holder may bring an action on his individual account for some injury done or threatened to himself or to restrain the doing of an act which is *ultra vires* of the company. If he wishes to take action on behalf of the company as a whole, his ordinary method would be by moving a resolution at a general meeting, but in some special cases where the danger is imminent he may file an action to restrain the directors from doing some act prejudicial to the company making the company itself a co-plaintiff. In such a case, the Court may grant a temporary injunction to prevent the doing of the act in question, until the share-holders have been consulted and have expressed their opinion. If any question is required to be put to the share-holders, it should only be this, namely, whether the share-holders approved of the company being a plaintiff in the action.—

**44 T. L. R.**, *398* (=**19 T. L. J.**, *214*).

**3.** A signatory to the Memorandum of Association of a company by his subscribing thereto irrevocably binds himself to contribute towards the capital of the company the proportion for which he subscribes. He becomes by such subscription *ipso facto* on the incorporation of the company a member, and therefore liable as the holder of whatever number of shares he has subscribed for. If however all the shares have been otherwise allotted to others and the taking of the shares specified against him has become thereby impossible, the liability cannot be insisted upon. If such allotment has not become final, the liability will still continue. It has, however, to be noticed that for the creation of this liability, a formal allotment or the entry of the name of the signatory in the register of members is not necessary. The directors have no right at allotment to interfere with the liability so undertaken by the signatory or refuse the allotment.

Lapse of time, however long, will not relieve a subscriber to the memorandum of his liability.

Nor will the plea of misrepresentation for avoiding liability avail him.

A subscriber to the Memorandum of Association is not bound in law to pay his dues on account of the shares taken by him except as and when calls are made on him according to the provisions of the Articles of Association unless agreed to otherwise by an express agreement with the company or provided for to the contrary in the Articles of Association themselves.—

**45 T. L. R.**, *89* (=**19 T. L. J.**, *330*).

**4.** The Articles of Association of an incorporated company, as distinguished from the Memorandum of Association, form the agreement between the company and its share-holders, and the same will be valid and binding on them until varied or modified in the manner prescribed by law. They will be binding on the company and its share-holders as if they had subscribed their assent thereto even at the time of its

incorporation. Of course, these Articles would be subject to the Memorandum, as any clause contained therein which confers powers not given by the memorandum will be ***ultra vires.***

Though the Articles of Association can neither constitute a contract between the company and an outsider, nor give any individual member of the company special contractual rights beyond those of the members generally, they do in fact constitute a contract between the company and its members in respect of their ordinary rights as members.— **19 T. L. J., *275.***

**5.** An unregistered company is an ordinary partnership in the eye of the law, and in the absence of a contract to the contrary, the partners are separately and jointly liable for the partnership debts.— **19 T. L. J., *713.***

## REGULATION II OF 1092.
### (*Christian Succession.*)

The parties who are converts to Christianity from the oil monger caste are governed by Hindu law in matters of succession.— **4 S. D., *331.***

## REGULATION VII OF 1092.
### ( *Markets.* )

The plaintiff, the licensee of a private market sued the defendants for recovery of damages for the loss caused to the plaintiff by the holding of an unlicensed rival market by the defendants: ***Held.***—The suit was not maintainable. The license issued under the Markets Regulation did not create rights in the nature of a monopoly, and the holding of a market without a license could be subjected only to the penalties prescribed under the Markets Regulation. It was not the intention of the Legislature to create any right in the licensee of a private market other than the right mentioned in the license, namely, that of carrying on a market on a particular piece of land. And as the defendants were not shown to have interfered with that right of the plaintiff, there was no cause of action for the plaintiff (F. B.).— **44 T. L. R., *357* (=18 T. L. J., *1185*).**

## REGULATION III OF 1094.
### (*Chitties.*)

**1.** In view of the prohibition contained in Section 5 of the Regulation, the non-registration of a Chitty, the Chitty amount or value thereof is one hundred rupees or more makes it void; and such Chitties do not create or give rise to obligations or rights enforceable in a Court of Law (F. B.). **43 T. L. R., *199* (= 17 T. L. J., *541*).**

**2.** The suit was on a Chitty bond for recovery of the whole amount of future subscriptions in a lump on the allegation that default was committed in the payment of certain instalments. The defence was that there was no default and that the instalments in respect of which default was alleged were paid. On the question as to whether the plaintiff should first make the default or the defendant should prove the payment of the instalments: ***Held.—Per the Chief Justice.***—On general principles the burden of proof lies on the defendant to prove payment of all the disputed instalments.

***Per Joseph Thaliath, J.***—The plaintiff should lead evidence as to the default. For only when there is default, the right accrues to the plaintiff to claim the whole amount. The slightest evidence on the part of the plaintiff might shift the burden on to the defendant to prove that there was no default.— **19 T. L. J., *328.***

**3.** The suit was upon a Chitty hypothecation deed for recovery of future subscriptions in a lump on the ground of default. It was contended for the defendant that the cause of action for claiming the future subscriptions in a lump could arise only from the date of demand: ***Held.***—Article

60 of the Limitation Regulation (1062) which has to be strictly construed, cannot be held to be applicable to Chitty hypothecation deeds, especially as hypothecations have been expressly dealt with under Article 109. No other provision exists in the Statute book of this State which could be said to prohibit a contract of the kind in question, nor can the contract be said to be opposed to any rule of public policy. Parties should be allowed full liberty in the matter of creation of contractual rights and liabilities, the Courts being entitled to refuse the enforcement of such rights and liabilities only if they contravene any statutory provisions or are found to be against recognised rules of public policy.—

**19 T. L. J.**, *558*.

**4.** The defendant was a prized subscriber in the plaintiff's Chitty and had executed the Chitty security bond whereby the plaintiff had the right to recover the future subscriptions in a lump in case of default of payment of any instalment. The defendant made default at the 8th instalment, but subsequently paid the amount with interest appropriating it towards the 8th instalment. The plaintiff accepted it as part payment of the lump sum due to him and sued for the balance. The defendant contended that the plaintiff had by the acceptance waived his right to recover the future subscriptions in a lump: *Held.*—No waiver was proved in the case. Only one debt existed at the time of payment. As a result of the default to pay the 8th instalment, the remaining instalments became payable in a lump quite apart from any demand by the foreman. It might be regarded that the principal of a debt and interest due on it were separate debts to a certain extent, at any rate. But in the case, there was not one debt due for the 8th instalment and another debt for the instalments 8 to 13 in a lump. So no question of appropriation to the former debt could arise.—

**44 T. L. R.**, *461*.

**5.** See also Regn. V of 1067, Sec. 224.—
**18 T. L. J.**, *1330*.

## REGULATION VI OF 1094.

*(Motor Vehicles.)*

**1.** The prohibition against driving without lights contained in Rule 16 of the Rules framed under Section 12 of the Regulation is absolute and it is rightly so, as the existence of any plausible excuse for disregarding the prohibition will not obviate the danger to the public which it is the object of the Regulation to prevent.

The fact that the accused is a well-behaved young man and the circumstances that the lights went out at a place where he could not get other light and that there were no passengers in the car are considerations irrelevant for a conviction under the Regulation, though they may be relevant in passing sentence upon the accused.

Section 433-A of the Criminal Procedure Code which provides for letting off the accused with a warning under certain circumstances applies only to certain Sections of the Penal Code and is not applicable to the case in question.—

**44 T. L. R.**, *139* (=**19 T. L. J.**, *28*).

**2.** Clause (4) of Section 19 of the Regulation vests a discretionary power in the Court to suspend a driver's license pending the prosecution before it for an offence under the Regulation. This power is an extraordinary power and it should be exercised only in cases where the nature of the act alleged against the driver is such that it *prima facie* makes it dangerous to the public safety to continue his license. If the act, for instance, shows that he is an inefficient or reckless driver, the Section may be brought into play. But except in such cases, the driver's licence should not be suspended pending the prosecution. It behoves the Magistrates to use the power sparingly and with judicial caution.

The main object of the Motor Vehicles Regulation is the protection of the travelling public from the dangers arising from

inefficient, rash and negligent driving of motor-cars. Apart from sentences passed on conviction, the disciplinary powers conferred by the Regulation should be exercised to advance that object and only so far as they are necessary for the purpose.

**45 T. L. R.,** *61* (=**19 T. L. J.,** *378*).

**3.** The charge framed by the lower Court against the accused comprised the following heads, namely, (1) that the accused drove a motor car rashly and negligently so as to endanger human life; (2) that he ran the car against the deceased P. P., and by such rash and negligent driving caused his death; and (3) that he omitted to give information to the Police of the mishap as required by the Motor Vehicles Regulation: *Held.*—There is need for more than ordinary caution in dealing with the evidence in a case of this description. No doubt, there are drivers who are mad after the topmost speed and callous to the safety of others, but pedestrians are by no means few who pay no heed to a motor car in motion and make no attempt to keep out of harm's way. It is not seldom that one meets people walking listlessly on the roads, as if they have a primary claim to the use of public roads and motor vehicles can be driven along by their leave and license. Where, thus, the odds of recklessness are or less evenly balanced between the pedestrians and motor car drivers, where there is room for unconscious prejudice, the need for sifting the evidence can hardly be exaggerated. The pedestrians far outnumber the chauffeurs. And when a mishap of the kind in question occurs, the general outcry is invariably against the chauffeurs.

Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so and that it may cause injury but without intention to cause injury or knowledge that it will be probably caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequence. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted.

Each case must be judged in reference to the precautions, which in respect of it, the ordinary experience of men has found to be sufficient, though the use of special or extraordinary precautions might have prevented the particular accident which happened.

The presence of a Police Officer at a considerable distance from the scene of accident cannot relieve the driver of a motor car of the duty cast on him by Section 5, Clause (2), of the Regulation of reporting the accident to the Police. The expression "presence of a Police Officer" must mean such proximity of the Officer to the person in charge of the car as to enable the Officer to take down the necessary statement, if needs be by stopping the car for the purpose.— **19 T. L. J.,** *1298.*

**4.** In the case of a bus with a seating capacity of ten or more persons, the driver is not responsible for the duties of the conductor as defined in Rule 31 (A), though in buses of less seating capacity, the driver has to perform all the duties of the conductor.

It is therefore no part of the duty of the driver of a bus, with a seating capacity of ten or more persons, to see that the bus is not overloaded.— **45 T. L. R.,** *323.*

## REGULATION X OF 1094.

*(Survey and Boundaries.)*

**1.** Where disputes arise as regards the identity of the property, the primary canon of construction is that the boundaries alone should be looked into where they are clear and unambiguous. If, however, they are vague and uncertain, the other descriptions such as that relating to quantity must prevail. For instance, if the boundaries would

take in properties which are not admittedly covered by the document or where the boundaries are unidentifiable or are not capable of being specifically located, in such cases they must necessarily give way to the other descriptions contained in the document which may help the Court in identifying the property covered thereby.—

**19 T. L. J.**, *224*.

**2.** The evidence supplied by boundaries, extent, survey numbers and lekkoms forms the determining factors when the identity of property is put in issue. If all these factors hormonise, there is little difficulty to identify the property in dispute. But when some of them are in conflict with the rest, as where the extent and the survey number do not agree with the boundaries, usually the boundaries predominate and the rest is regarded as erroneous or inaccurate descriptions. This is not an inflexible rule and the guiding principle is to apply that test which is most unlikely to be vitiated by error.— **19 T. L. J.**, *1142*.

## REGULATION IV OF 1095.

### (*Police.*)

See Regn. V of 1067, Sec. 175.—

**18 T. L. J.**, *227*.

## REGULATION V OF 1095.

### ( *Municipal.* )

**1.** To constitute "plying for hire" under Section 65 of the Regulation, the accused or his employers must have either actively or by conduct solicited passengers for a trip.— **44 T. L. R.**, *386* (=**18 T. L. J.**, *1832*).

**2.** A charge was laid under Section 65 (2) of the Regulation on the allegation that the respondent failed to give information regarding taxable vehicles in his possession called for by the President of the Municipality under Section 83 (1). All that was proved was that a printed paper in D Form was issued to the respondent. The lower Court acquitted the respondent. On appeal: *Held.*—A demand in writing for the information under Section 83 (1) is the foundation for liability under Section 65 (2). If that demand in writing is not proved, the prosecution must fail.

A reading of Section 83 (1) shows that a sending of the D Form alone will not satisfy the requirements of the Section. It must be sent with a requsition that it should be filled with such information as may be indicated in the requisition as deemed necessary by the President.—

**18 T. L. J.**, *1336*.

**3.** Where the disobedience of a notice issued under Clause (2) of Section 183 of the Regulation, criminal proceedings are started in a Court, the legality of the issue of notice could be questioned before the Court, and the Court has the power to enquire into the question as to whether the notice was lawfully issued before convicting the delinquent indicted before it.—

**19 T. L. J.**, *555*.

**4.** Using a place within a Municipality for the manufacture of soda water without a license is clearly an offence under Section 138 (3) read with Clause (*j*) of Sub-section (1). In order to make such an act punishable, it is not necessary that such user should have been prohibited by the bye laws of the Municipality.

Under the Rule-making powers which Municipal Councils have under Section 244, they cannot be deemed to have the right to declare acts constituted to be offences to be immune from being proceeded against or to make acts not constituting offences under the Regulation punishable by virtue of the bye-laws issued by them.

**19 T. L. J.**, *857*.

**5.** The provisions of Section 233 of the Regulation cannot be extended to the non-compliance of a notice issued under Section 83 (3), and therefore it cannot be held

that the former Section can be applied to any default made under the latter (F. B.).—
**45 T. L. R.,** *308* (=**19 T. L. J.,** *898*).

**6.** See also Page 272, *Supra*.—
**44 T. L. R.,** *465* (= **18 T. L. J.,** *1296*).

## REGULATION VIII OF 1096.
### (*Income-Tax.*)

**1.** In computing the profits of a partnership for the purposes of income-tax, the following allowances may be made in the case of the partnership or firm namely, payments by way of a reasonable salary paid to the partners for work done for the partnership such as for managing the business or by way of travelling expenses when such payments are necessary to enable the profits to be earned and are payable irrespective of the earnings of the profits (F. B.)—
**44 T. L. R.,** *26*(=**18 T. L. J.,** *1244*).

**2.** The Tahsildar of Agastisvaram assessed one K. to income-tax on an income of Rs. 2040 on account of Veethapalisa received by him from a Chitty to which he was a subscriber. On appeal by K. the Assistant Commissioner decided that Veethapalisa was not assessable and set aside the Tahsildar's decision. The Chief Revenue Authority, exercising the powers of revision under Section 23 of the Regulation, held that Veethapalisa was assessable to income-tax and set aside the Assistant Commissioner's order, and re-directed the Tahsildar to re-assess K. Before so doing, the Chief Revenue Authority did not hear the assessee or give him a reasonable opportunity of being heard or by pleader. The Chief Revenue Authority referred this question to the Full Bench under Section 52, Clause (2), of the Regulation. *Held.*—The word "enhancement" contained in Section 23 is not restricted in its meaning to an increase in the assessment already made by a subordinate authority, but is wide enough to include a re-assessment ordered by the Commissioner on setting aside the appellate order reversing the assessment made by the Collector.

An order by the Commissioner under Section 23 in the above circumstances without giving notice to the assessee and without giving him a reasonable opportunity of being heard is illegal,—
**44 T. L. R.,** *68* (=**19 T. L. J.,** *105*).

**3.** Interest on the prize amount of Chitties is taxable income under Section 4 of the Regulation.

Where a subscriber to a Chitty prizes his ticket, the payment of the future instalments by him must be regarded primarily as repayments of the capital. In the case of a foreman who receives the whole amount, without deduction of any Veethapalisa, the subsequent payments are only equivalent to the amount of the prize money, and therefore, no question of payment of interest arises; but it is only in the case of a foreman that it could be said that the money was borrowed for carrying on the Chitty business. *Prima facie,* at any rate, the foreman could not claim any deduction under the Clause or at any rate could not do so without filing a statement showing how much of the subscriptions paid by him was interest and how much was by way of repayment of the loan by the subscribers (F. B.).— **19 T. L. J.,** *109.*

**4.** The amendment of Section 50 by Section 36 of Regulation V of 1100, has no retrospective effect. Therefore, in proceedings pending on the date the amended Regulation came into force, the assessee's rights of claiming a reference to the High Court are not subject to the limitation laid down in the amended Section (F. B.).—
**19 T. L. J.,** *930.*

**5.** The income of the Namburipad of Akavoor Mana by way of Michavarom, &c., derived from his tax-free lands is assessable to income-tax (F. B.).—
**45 T. L. R.,** *400* (=**19 T. L. J.,** *1330*).

**6.** The following questions were referred by the Chief Revenue Authority to the High Court:—(1) Is the income of the Bombay Company Ltd., Alleppey, which

accrued or arose or was received in Travancore and was assessed to Travancore income-tax chargeable to British Indian income-tax in accordance with the Law of Income-tax there, whether or not the said income was remitted to British India; and (2) even if the assessment of the said income is not in accordance with the Law of Income-tax there, are the Company entitled to claim relief from double income-tax by reason of Section 36-A of the Income-Tax Regulation, read with the Government Notifications Dis. Nos. 1653/23/Rev., and 318/28/Rev., dated 5/8th December 1923 and the 7th March 1928 respectively.

(1) The second question was answered in the affirmative and the assessee concerned was held entitled to claim relief from double income-tax.

It was also held that the Notification dated 7-3-1928 had no retrospective effect.

(2) It was not the intention of the Legislature to constitute the High Court as a referee to advise the Chief Revenue Authority upon hypothetical questions of law formulated by him which are entirely foreign to the case upon which a reference is made to the High Court by virtue of Section 50.

The first question was not answered as it did not arise from the case.

*Per Venkitarama Iyer, Ag. Chief Justice.* —It is unnecessary for purposes of this reference to consider whether Section 36-A had come into operation or not.

*Per Joseph Thaliah, J.*—Section 43 of the Regulation, so far as it relates to relief in respect of double Income-tax should be deemed to have been repealed and re-enacted with modification by virtue of Section 16 of the General Clauses Regulation and the Notifications or Rules published or prescribed under Section 43 considered as published or prescribed under the provisions re-enacted.

*Per Narayana Pillai, J.*—Section 36-A can by no means be construed as having repealed Section 43 in its entirety. Section 36-A deals only with a slice of the wide discretion vested in Government under Section 43.— **45 T. L. R.,** ***408.***

---

## REGULATION III OF 1097.

### *(Land Assignment.)*

1. Land in excess of the registered measurement or extent but lying within the specified boundaries of a registered land is not 'Government Land' or land at the disposal of Government.

Where a person owning such registered area purchased in revenue auction, (such excess which was in the possession of a stranger), such purchase is not inconsistent with his title.

Government is not bound by the acts of its agents, unless it manifestly appears that the agent is acting within the scope of his authority.— **4 S. D.** ***25.***

2. Whether a Puduval registry in the name of a mortgagee can enure for the benefit of the mortgagor is always a question of fact, as the only question which has to be decided in such cases is whether the circumstances in which the mortgagee secured the registry are such as to make him liable in equity to surrender it in favour of his mortgagor. To import considerations of the absolute right of the Sirkar to register the land in favour of any body they choose is likely to cloud the issue.

The right of the Sirkar is not questioned in such cases by either party. The act of the Sirkar is not impugned as wrong or unauthorised, and no remedy is claimed against the Sirkar. The question is purely one of equity between the mortgagor and mortgagee. That the Sirkar chose to register it in favour of the mortgagee does not in itself materially affect the question.

It is open to the mortgagee to show that he secured the registry after such an open and fair contest with the mortgagor before

the registering authority that he was entitled in equity to keep it. The Court has in each case to decide as a fact whether the mortgagee did not make any unfair use of his position as mortgagee to secure the registry. If he did so, there would be an equity in favour of the mortgagor; otherwise there would be none.—

**19 T. L. J.,** *435.*

**3.** See also Regn. VI of 1100, Secs. 130 and 132.— **43 T. L. R.,** *255.*

## REGULATION VI OF 1099.

### (*Reformatory Schools.*)

The Court must be clear on two points before it applies Section 28 of the Regulation. It must be satisfied that the act of the youthful offender constituting the offence of which he is convicted is an isolated act due to some sudden impulse and not the result of a plan of action deliberately designed for the attainment of a criminal object. It must further be satisfied that the parent, guardian or relative who undertakes to take charge of the youthful offender is one who will be able by the nature of his relationship and by his own status and character to exert a beneficient influence on the youthful offender and thus save him from bad associations and pernicious bringing up, and that in fact, there is a great likelihood of improvement in his character by such entrustment than by his detention in a Reformatory School. Unless satisfied on both these points, the Court will not be justified in invoking the provisions of Section 28 of the Regulation.—

**19 T. L. J.,** *581.*

## REGULATION II OF 1100.

### (*The Nayar.*)

**1.** Vilakkithala Nayars are known and recognised as Nayars, and they are governed by the Nayar Regulation. All recognised authorities on the subject have treated them as a sub-division of the Nayar community.— **45 T. L. R.,** *55* **(=19 T. L. J.,** *488***).**

**2.** The Nayar Regulation of 1088 conferred upon the parties the right to move for a dissolution of marriage and entitled them to an order in their favour, compensation being declared payable under certain circumstances. The right to compensation is a vested one which could not be treated as a part of processual law. The nature of the right so vested has to be determined with reference to the provisions contained in the statute setting forth the circumstances under which the claim could be made. As the law stood before the passing of the Nayar Regulation of 1100, the claim was declared competent irrespective of the grounds of dissolution, such as misconduct. The restriction regarding the admissibility of the claim under the statute of 1100 could not affect a right to claim compensation allowed under the repealed statute with respect to applications for dissolution filed when the latter statute was in force.—

**19 T. L. J.,** *1327.*

**3.** A suit was instituted to set aside the decree and execution proceedings in O. S. 317 of 1092 obtained by the second defendant against the first defendant on the ground that it was obtained against the first defendant alone without impleading the senior Anandaravan of his Thavazhi and that it therefore offended against Section 25 of the Nayar Regulation of 1088. The defence was that plaintiff was estopped from raising the contention that the decree is invalid and not binding on the Tarwad, as he was impleaded in place of the deceased 1st defendant in the execution proceedings in O. S. 317 of 1092 and he did not challenge the validity of the decree in these proceedings. The Courts below accepted the defence and dismissed the suit. On special appeal by plaintiff: ***Held.***— There is no estoppel arising in the case. As the plaintiff has by no declaration act or omission intentionally caused or permitted the 2nd defendant to believe anything to be

true and to act on such belief. The 2nd defendant obtained the decree in O. S. 317 on his own choice against the 1st defendant alone and he put that decree in execution.

There is no legal duty cast on the plaintiff to appeal in the case and inform the second defendant that the decree is invalid as it contravened the provisions of Section 25 of the Regulation of 1088. There is therefore no estoppel operating against the plaintiff in the case.

Even though the plaintiff was impleaded in the place of the 1st defendant in execution proceedings, he could not object to the validity of the decree as against the Tarwad in the execution proceedings as there was no decree properly speaking against the Tarwad.— **19 T. L. J.,** *1365.*

---

### Malabar Law.

**1.** In construing deeds, expressions creating powers have to be construed strictly. Of course, incidental powers which can in no sense be considered to be outside the scope of the authority conferred may by implication be deemed to be created in such cases. When an agency is created, the extent of the authority should be determined by a reference only to the terms creating the agency. If a person is acting *ex mandata,* persons dealing with him must look to his mandate. The other powers the agent in the particular case may otherwise have cannot be invoked, in determining the scope of the authority under the agency.

Where under a Nischayapatram executed by the members of an undivided Nayar Tarwad, a junior member has been authorised to execute a sale or mortgage with possession, for the discharge of certain specified debts, the authority cannot be taken to cover the execution of a hypothecation bond which is a larger burden imposed upon the property in the shape of the interest accruing thereon.

Under the terms of a Nischayapatram, the hypothecator could not be treated as junior member in management, and the transaction under the hypothecation must be construed as one entered into with an ordinary junior member who could exercise a right of alienation only in cases of urgent necessity. The responsibility of the creditor is greater in such cases, and he has to satisfy himself as to the application of the money if he wants his debt to be made binding on that Tarwad.

Improvement upon Tarwad property cannot be deemed to be a necessity which would justify an encumbrance upon Tarwad property, especially where they are not shown to be urgent.—**18 T. L. J.,** *634.*

**2.** It is a well settled rule of law that, in the case of alienations by the Karanavan of a Marumakkathayam Tarwad impeached by junior members, the creditor has to prove the passing of consideration under the document. He has to adduce independent proof of the same. The recitals in the document cannot by themselves amount to such proof. They can only bind parties thereto or their privies. It is open to the parties to contend that no consideration passed under the document or that the same was not paid in the manner described in the document. In such cases the onus will be on the party alleging the same, if execution of the document and the delivery thereof to the creditor are admitted. Of course, if the payment of consideration is admitted to have been made after such execution and delivery, the burden of proof will be shifted to the creditor himself. But these rules are applicable only in the case of parties to the document and not to those of impeachments by third parties not claiming through them. In cases where third parties question the validity of the document, the creditors themselves have to prove the passing of consideration by evidence of proof *aliunde.*

The imperative nature of recitals relating to necessity on reversioners or sons impeaching alienations by widows or fathers, as the case may be, can be applied with propriety to the passing of consideration also.

The junior members of a Malabar Tarwad cannot be said to claim their rights to the Tarwad through their Karanavan nor can the Karanavan be held to be agent of the junior members in matters of this kind so as to make statements made by him *ipso facto* binding on such junior members.

The acknowledgment of a debt as a valid and binding one by certain seniormost junior members may be taken in account in estimating the evidence adduced as regards the proof relating to consideration, and if it is found that the seniormost Seshakars could not be held to have colluded with the Karanavan to defraud the Tarwad to advance their own interests, such acknowledgment may be considered as a strong circumstance lending support to the other evidence regarding the passing of consideration. But in the absence of any other evidence on record, a finding regarding the passing of consideration cannot be entered in such an acknowledgment alone, when the same has been impeached by the junior members of the Tarwad.

The rule has been consistently laid down that, on proof of passing of consideration, a presumption could arise in favour of Tarwad necessity, but the weight to be given to such presumption would vary according to the facts of each case. If the purpose alleged is on the face of it one not recognisable as a necessity, the presumption would not arise. If the creditor is shown to have acted *mala fide* in the matter, it is doubtful whether the presumption will arise.

The junior member has a right to call upon the creditor to specify the purpose or purposes for which the loan is advanced, if the document taken by him is silent in this behalf. Non-compliance with this requisition on the part of the creditor would disentitle him to the presumption in his favour as regards Tarwad necessity. If the junior member fails to make out absence of the particular necessity mentioned in the document or set out by the creditor in pursuance of the above requisitions, the creditor is entitled to succeed. If, on the other hand, the junior member impeaching the transaction succeed in making out that no such necessity existed, the creditor would fail unless he proved that a *bona fide* enquiry was made by him as regards necessity before advancing the loan.

*Per C. J. and Venkitarama Iyer, J. (Joseph Thaliath, J. dissenting).*—What exactly is necessary to cast on the creditor the duty of specifying the purpose or purposes for which the loan was advanced by him? When absence of necessity is specifically pleaded by the junior members, in cases where the documents evidencing the loan are silent as regards the purpose for which the same was contracted, it is desirable that the creditor should detail out the purposes of the loan to enable the members of the Tarwad impeaching the loan, to adduce evidence to rebut the presumption regarding necessity arising in his favour. In such cases, Courts will do well to call for supplementary written statements or replications from the creditors setting forth the same, treating the express denial of necessity by the junior members as a demand for such details which the creditor was bound to comply with. Even in cases where no such direction is made by the Court or the creditor fails to detail out the items of necessity as indicated above, the question of the creditor while in the box as to such details will clearly constitute such a requisition, and the omission to furnish such details when so questioned would clearly amount to an omission to discharge this duty. The creditor cannot, in such a case, claim the benefit of the presumption as regards necessity. It cannot be contended that the specific denial on the questioning of the creditor in the witness box will be insufficient to prevent him from claiming the benefit of the presumption as regards necessity.

*Per Joseph Thaliath, J.*—In the absence of specific issues relating to particular necessities a party should not be allowed to take advantage of any stray statements relating to that subject that might fall from the mouth of his adversary when examined as a witness.— **19 T. L. J.,** *134.*

**3.** No general proposition of law can be laid down that acquisition of other properties can, under no circumstances, justify the sale of Tarwad properties. On the other hand, it has been held in various cases that Tarwad properties may be validly sold to acquire other properties if it is to the manifest advantage of the Tarwad.

The question must depend on the circumstances of each case. The test is as to whether the transaction is beneficial to the Tarwad or not. If it is beneficial to the Tarwad, the sale has to be upheld; otherwise not (F. B.).— **19 T. L. J.,** *300.*

**4.** The mere fact that a Chitty has been subscribed for on behalf of the Tarwad does not alter the rule as regards Tarwad necessity. As in other cases, the creditor starts with a presumption in his favour, which, however, the members of the Tarwad may rebut. But in considering the question whether necessity has in fact been proved, allowance should be made to the peculiar position of the foreman. By refusing to pay without very strict proof that the money is wanted for a Tarwad purpose, he may render himself liable to a suit by the members of the Tarwad. This danger will be greater where the security offered is a document executed by all the adult members, and it could hardly be open to the creditor to refuse to pay merely because there were minors in the Tarwad. A difficulty would also arise as to the nature of the necessity which would have to be represented to him to enable him to feel safe in making the payment. He would hardly be in a position to make such searching enquiries as a person who has been asked to advance money. So long as the foreman *bona fide* pays the prize money in the reasonable belief that it will be applied to Tarwad purposes, he should not lose his rights as against the Tarwad.— **19 T. L. J.,** *333.*

**5.** Though at one time the High Court had been refusing separate maintenance to a junior member living away from the Tarwad without the consent, express or implied, of the Karanavan, the trend of decisions is to recognise such a right if the same was for good and valid reasons. This right has been consistently recognised by the High Court after the pronouncement in favour of the same by a majority of the judges in 35 T. L. R., 310. The refusal by a recalcitrant Karanavan to accord such permission if the circumstances justify a junior member living away from the Tarwad house could not affect the admissibility of a claim for separate maintenance. Whether the grounds found to exist in a particular case are good and sufficient to warrant such a claim will have to be decided with reference to the facts of that case, the pronouncements already made in this matter not having to be taken to have exhausted the list of good grounds which may be urged.

In the case of aristocratic families, the claims of junior members for separate maintenance have to be considered liberally, and the rule enunciated in 35 T. L. R., 310 relaxed in their favour as far as possible (F. B.).— **19 T. L. J.,** *343.*

**6.** When the senior Anandaravan of a Tarwad gets a registry of Kuthakapattom lands in his name, with the consent of the Karanavan, such registry enures to the benefit of the Tarwad. In such cases, the principle of Section 90 of the Indian Trusts Act would become applicable.

In the case of an alienation by a Karanavan which is sought to be set aside, where consideration is proved by the alienee, the presumption of necessity in favour of the alienee can arise only if he shows that the Karanavan was a party to the transaction *qua* the manager of the Tarwad.

Where junior members challenge a transaction as devoid of Tarwad necessity, the creditor or alienee should be prepared to disclose the necessity.

The reference in the above case to questioning the creditor in the witness-box should not be so construed as to relieve the creditor from specifying the necessity in the pleadings. Otherwise, the junior members in their attempts to disprove necessity would simply be beating the air, till the creditor enters the witness-box, and the trial will have to be recommenced from the examination of the creditor. The examination of the creditor is for purposes of evidence, and no evidence is admissible unless the pleadings contain an allegation to be substantiated. The junior members are under no curse disentitling them to a knowledge of the case they have to meet or obliging them to go through a sort of blind man's bluff in a judicial trial till it pleases the creditor to enter the witness-box.

There is also some loose thinking in applying the formula relating to the presumption of necessity arising from proof of consideration. A presumption arises only where the proof falls short of the requirements of the case pleaded. There is no scope for any presumption when there is evidence covering the point to be established. In other words, a presumption is invoked to make up a lacuna in evidence. There is no justification for leaving the matter to be presumed in vagueness or obscurity. Does the creditor know the specific necessity for the transaction. If he does, he can specify it and ask the Court to presume the same on proving consideration. If he does not, what is it that he asks the Court to presume or the junior members to disprove.

The junior members do not claim their rights to Tarwad property through the Karanavan or other junior members. Their rights stand on an independent footing.

There is no distinction between minor junior members and major junior members in the matter of proof needed with respect to consideration and necessity. The only point of difference is on the question of consent.

The necessity has to be 'pressing Tarwad necessity'.— **19 T. L. J.,** ***1044.***

**7.** The adult members of a Marumakkathayam Tarwad are competent to divide the Tarwad properties, and execute a partition deed.

In the absence of fraud, it is binding upon the minor members of the Tarwad.

The burden of proof of fraud or prejudice is upon those who set it up.

Even if fraud or prejudice is proved, the minor members are entitled only to have the partition deed re-opened so far as their share is concerned, and to have their proper share set apart for them, but subject to this the partition is final as between those who were parties to it.

Where the adult members of a Tarwad admitted the existence of debts in the partition deed and authorised a member of the Tarwad to sell Tarwad properties for their discharge, there is a very strong presumption that those debts are genuine and binding upon the Tarwad.

The adult members of a Tarwad have the discretion to decide whether the division should be *per stirpes* or *per capita*, and the principle to be adopted in cases where there are minors at the time of partition, is what would best serve the interests of the minors.

Where minors exist at the time of partition, and they are the children of the same mother, it would be the most proper thing to give them a joint share and not separate shares; such is the usual procedure in Marumakkathayam Tarwads (F.B.). **44 T. L. R.,** ***126*** **(=19 T. L. J.,** ***1233*****).**

**8.** A decree was passed against the first defendant and the Tarwad properties of defendants one and two. The decree was *ex parte*. The first defendant had the *ex-parte* decree set aside. Then the first defendant and plaintiff compromised the suit, and a decree in terms of the compromise was passed under which the first defendant and the Tarwad properties were made liable. The second defendant raised objection to the execution of the decree in execution proceedings, and the objection was

allowed by the lower Court. On appeal: *Held.*—It is not open to the second defendant to treat the compromise decree as a nullity, even though he was not a party to the compromise. Such decree is binding on the second defendant until it is vacated by a proper proceeding.

Jurisdiction is the power to hear and determine a matter. It does not depend upon the regularity of the exercise of that power or upon the correctness of the decision pronounced, for the power to decide necessarily carries with it the power to decide wrongly as well as rightly.

A distinction has to be drawn between the existence of jurisdiction and an exercise of jurisdiction. Where the exercise of jurisdiction is declared permissible only on the performance of an action as a condition precedent thereto, it would be a case of absence of jurisdiction until that condition is satisfied and not an improper or wrong exercise of jurisdiction. If, however, jurisdiction is had in the Court, the decision passed by it will continue to have binding force between the parties until vacated by one of the modes allowed by law.

The opportunity allowed to junior members of a Tarwad to contest the validity of a decree as against the Tarwad in execution, would be available only in cases where the objector had not been a party to the decree, but has been brought in on the record for the first time as the legal representative of the deceased Karanavan in execution.

With regard to the effect of decrees against a Karanavan, on the junior members of a Tarwad, the opportunity to contest the validity of such decrees must be restricted to the three classes of cases enumerated in paragraph 8 of the judgment in 21 T. L. R., 41.

"Where (*a*) there has been a fraud or collusion or treachery on the Karanavan's part, or (*b*) that the Court was cheated into believing that the case was fairly fought or fairly represented when in point of fact it was not so, or (*c*) the Karanavan has not defended properly the former suit because the plaint debt being a personal debt of his, he could not very well himself defend the suit on behalf of the Tarwad though there was no fraud, collusion or treachery, then the Tarwad had not been properly represented and ought to be given an opportunity in a fresh suit to prove that the debt did not exist or was not binding upon it."—

**19 T. L. J.,** *1373.*

**9.** In a partition suit by certain members of a Marumakkathayam Tarwad, the application of some of the plaintiffs for directing the Karanavan, 1st defendant, to deposit in Court the maintenance claimed by them in excess of the amount admitted by the Karanavan before issues were framed in the case was allowed by the lower Court. In revision, the question was raised that the lower Court had no jurisdiction to pass such an order: *Held.*—Issues not having been raised in the case, the order could not be treated as a preliminary decree under Rules 16 and 18 of Order XX, C. P. C., nor as an interlocutory judgment passed on the admission of parties under Rule 6 of Order XII. The order could not also be regarded as passed under Clause (i) (*d*) of Rule 7 of Order XXXVII. Nor would it be proper or expedient, in the circumstances of the case, to exercise the inherent powers under Section 115 to dispose of the matters in dispute in the case summarily even without framing the issues involved or following the rules of procedure laid down in the Code for the trial of suits.— **45 T. L. R.,** *423.*

**10.** See also—

Page 157, *Supra*,—**19 T. L. J.,** *1013.*
" 194, " —**45 T. L. R.,** *3*
(=**19 T. L. J.,** *120*).
" 416, " —**19 T. L. J.,** *195.*
" 773, " —**19 T. L. J.,** *1.*

---

## REGULATION III OF 1100.
### (*Ezhava.*)

---

**1.** A mere failure on the part of the husband to maintain the wife for some time

would not *per se* constitute a divorce among Ezhavas. To allow such a presumption to be raised would be virtually denying to a certain extent the benefit of the salutary provisions of Section 366 of the Criminal Procedure Code to Ezhava wives.—
**19 T. L. J., *61*.**

**2.** Section 1, Clause (2), of the Ezhava Regulation makes it clear that the provisions of the Regulation apply only to Marumakkathayam Ezhavas domiciled in Travancore and to Ezhavas of the same denomination who, though not domiciled in Travancore, have maritine relations with Marumakkathayam Ezhavas domiciled in Travancore.— **43 T. L. R., *381***
**(=19 T. L. J., *210*).**

### Other Cases.

**1.** As regards property inherited by the children of a deceased Ezhava, the eldest son being the Karanavan of the sub-Tarwad, is entitled to sue alone as such without impleading the other children entitled to the property.— **4 S. D., *68*.**

**2.** The question was whether an issueless wife of an Ezhava was entitled to the separate acquisition of the accused: *Held.*—The widow is entitled to the usual half-share in such acquisitions.— **4 S. D., *130*.**

**3.** An investment or purchase in the name of wife or children in the case of a Marumakkathayee, raises a presumption of advancement, and not one of *benami* as under Hindu law. It is for the husband to rebut this.— **4 S. D., *357*.**

## REGULATION VI OF 1100.
## (*Limitation.*)

### Section 5.

See Page 297, *Supra.*—
**43 T. L. R., *53* (= 17 T. L. J., *1*).**

### Sections 6 & 7.

A decree was passed in favour of minors on 11-12-1088. The decree was affirmed in appeal on 27-10-1096. The application of 13-10-1096 was allowed by the execution Court on 17-10-1096. This order was confirmed in appeal. On 7-5-1098, the application of the appellant was dismissed. On 27-10-1101, the guardian of the minors assigned the decree to the present respondent. The latter filed an application for execution on that very day. The appellant resisted the application on the ground that more than three years had elapsed from the date of the order dismissing the application for execution. The Munsiff overruled the objection on the ground that the application had been put in within three years after the attainment of the majority of one of the assignors. This order was confirmed in appeal. On second appeal, it was contended that the benefit of Sections 6 and 7 of the Regulation given to minors could not be extended to their assignees: *Held.*—The concession given to minors under Sections 6 and 7 cannot be extended to their assignees. The privilege referred to in these Sections is a purely personal one. This special privilege becomes extinguished by virtue of the transfer.—
**45 T. L. R., *332* (= 19 T. L. J., *956*).**

### Section 10.

Plaintiff as the owner of a temple sought for a declaration of title and for recovery of possession of the plaint property belonging to the temple trust. The defendant's ancestor was enjoying the plaint property as lessee, and possession continued in the defendant's family under an *Ubhaya Marayam* arrangement requiring the balance of the rent after payment of the Thiruppuvarom to the temple to be appropriated towards interest on the sum credited towards *Marayam* (premium). The defendat denied the *Ubhaya Marayam* and pleaded limitation. *Held.*—The question of limitation so far as the suit was concerned had to be decided with reference to the provisions of Section 10 of the Regulation (1062). In the nature of the pleadings in the case, it might be taken that the property involved was one vested

in a person for a specific purpose connected with the trust. An express trust can be presumed in cases where a temple with an idol is had and properties are set apart for a specific purpose in connection with the worship in such temple. The rule embodied in Section 10 is applicable only to cases of express trusts.

An exemption from the operation of Section 10 can be allowed only in the case of assignees for valuable consideration without notice of the trust actual or constructive. If the trust belongs to the category of cases dealt with under the Section, and the beneficiary or a person claiming through him has otherwise the right in law to proceed against the property on behalf of the trust by reason of the property in question having been used for a pupose other than that for which it was originally vested in the trustee, the property has been declared liable to be followed in the hands of the trustee or any person under him, irrespective of the lapse of time under the Articles of the Regulation.

A distinction has to be kept between the transfer of proprietary rights over a right belonging to the trust consistent with the purpose for which the property was vested in the trustee, and the claim for such a right by prescription by virtue of a limited right so created and long possession thereafter. In the former case, it would be the absence of a right to pursue the property, while, in the latter case a denial of the right has to be made by reason of lapse of time. The latter case has to proceed upon the basis of assertion of full rights over the property being inconsistent with the purpose for which the property has been invested in the trustee.

Even viewing the *Ubhaya Marayam* as an assignment, the notice of the trust which the defendants' ancestor must be presumed to have had must perforce make Section 10 of the Regulation applicable to the case.— **19 T. L. J.,** *1095.*

---

### Section 14.

**1.** Under Section 14, in computing the period of limitation for a suit to recover money due under a periodically recurring right, the period of pendency of a suit for the same relief, dismissed for want of notice to Government under Section 409 C. P. C. (old) [=Sec. 65] has to be excluded.

Karathilchilavu literally means 'expenditure out of the land revenue.' It is in effect an *assignment* of the whole or of a specific portion of the revenue due on land, generally in favour of its holder. The amount assigned used to be neither actually collected from the holder nor paid to him, but it was fictitiously entered in the accounts as collected and then paid.

When a right has been enjoyed by a party for a very long time, the law presumes that it had a legal origin, and when necessary it will presume that the exercise of such immemorial right was based upon a valid grant.

Article 108 of the Regulation of 1062 [=Art. 118] applies in terms only to a suit to "establish a periodically recurring right." Establishing a right is different from claiming money due on the basis of the right, a consequential relief following from the right when established. The Article would on its wording apply only to a suit for a declaration of the right and would not apply to a suit for the recovery of money due in exercise of that right.

The Article applicable to such a suit is Article 100 of the Regulation of 1062 [= Art. 109] — **45 T. L. R.,** *103* (=**19 T. L. J.,** *82*).

**2.** The expression "Court" in Section 14 is not confined to Courts in Travancore, but includes foreign Courts also.— **19 T. L. J.,** *839.*

**3.** The suit, which was for redemption of a mortgage, was originally filed in the Munsiff's Court on 32-10-1097, that is, two days before the completion of 50 years from the date of the mortgage deed. The plaint was returned from the Munsiff's Court on

24-2-1099 for presentation to the proper Court, and was filed in the District Court on 25-2-1099. The question was whether the plaintiff could take advantage of the time the case was pending in the Munsiff's Court for saving the bar of limitation. The Judge held that he could not, finding that he had no *bona fides* in instituting the suit in the Munsiff's Court, and for this finding he relied on his own adverse findings recorded against the plaintiff regarding the latter's allegations of set-off and part-payment of the mortgage amount. *Held.*—The failure of a party to prove a statement, which was required to enable him to file the suit in a particular Court, could not be taken as conclusive evidence that he had no *bona fides* in filing the suit in that Court. The mere fact that a party had not established his allegations by proper evidence in a Court of law did not by itself show that his allegations were untrue.—

**19 T. L. J., *976*.**

### Section 15.

Whatever may be the effect of the pendency of the suit for vacating the decree sought to be executed, a decree of a competent Court nullifying the same to which the decree-holder in the prior suit is a party, should be considered sufficient to suspend the period of limitation available for the execution of the former decree under Section 15 (1) of the Regulation. The Section has to be liberally construed.—

**19 T. L. J., *624*.**

### Section 27.

In the case of a right of easement to take water from a well, the presumption of "lost grant" is applicable, and the right of easement should be refused only when evidence rebutting the same is adduced.

Where a defendant's denial of the user has been concurrently found against and where plaintiff's evidence was to the effect that the defendant feeling that the user by the plaintiff would be continued in spite of the obstruction by the former, acquiesced in the same, the plaintiff must be taken to have used the water from the well as of right.

Mere obstruction will be insufficient to constitute interruption within the meaning of Explanation II of Section 26 of the Regulation (1062), as it is essential that the obstruction for the period prescribed therein should have been acquiesced in by the party claiming the easement during that period.

Where it was contended that the suit having been based, on the claim for a declaration of the plaintiff's proprietary right over a share in the plaint well, she could not be given a declaration of a right of easement to the well. *Held.*—Where there is an express allegation in the plaint referring to a right of easement by reason of long and uninterrupted user, the above contention cannot be accepted as substantial.—

**19 T. L. J., *1106*.**

### Article 62.

See Regn. III of 1094.—**19 T. L. J., *558*.**

### Article 83.

The wording of Article 78 (old) does not support the restricted interpretation that the word "mistake" used in the Article refers only to mistakes that may have arisen in the course of the creation of contractual relations between the parties and that would give a right to a party to rectification of the contract. All that Section 78 requires is that the suit must claim some relief based upon the ground of mistake evidently mistake of the plaintiff, by reason of which he did something. The relief must be claimed not on the basis of some wrong committed by the defendant, but on the basis of a mistake made by the plaintiff. Evidently, the relief contemplated by the Article is relief from the consequences of an act done by the plaintiff himself, the basis of the claim being that the act was done because of a mistake, and but for the mistake, would not have been done.—

**45 T. L. R., *96***
**(=19 T. L. J., *349*).**

**Article 118.**

See Sec. 14 *Supra.*—**45 T. L. R.,** *103* (=**19 T. L. J.,** *82*).

**Articles 130 & 132.**

**1.** Every suit for possession of immovable property where the plaintiff alleges that he has had possession is one for ejectment to which the Article of the Limitation Regulation applicable is 119 and not 121.

In order to sustain a claim to land by Limitation, there must be an actual possession by a person claiming as of right by himself or by a person deriving title from him.

Possession by a person who enters on Government land with the hope that it may be registered in his name is not adverse possession, but only precarious possession, and cannot avail against the Government or a person acquiring title from the Government.— **43 T. L. R.,** *255.*

**2.** A distinction has to be kept in view between cases where there has been an express plea of possession and dispossession and cases where there has been no such plea. In the former case, Article 119 (old) will be applicable, while in the latter case Article 121 thereto should be applied. The time from which the period will begin to run in the former case will be the date of dispossession, while that in the latter case will be the date on which the possession of the defendant will become adverse to the plaintiff. In cases where recovery of possession on title is sought for, the plaintiff has only to prove his title, the defendant who sets up adverse possession having to make out such possession as would entitle him to resist the plaintiff's claim.— **19 T. L. J.,** *917.*

**Article 153.**

See Page 353, *Supra.*— **19 T. L. J.,** *286.*

**Articles 164 & 166.**

**1.** An application by the decree-holder to the Court which passed the decree under execution for a certificate to obtain a copy of the Chitta to enable him to place an attachment on the property of the Judgment-debtor is a step in aid of the execution of the decree.— **19 T. L. J.,** *269.*

**2.** Where an application was confirmed before Regulation of 1100 came into force, but the application for delivery of possession of purchased property was made after the date of enactment of the Regulation, the law of limitation applicable to the application in question is the law in force at the date of application.

The application for delivery of possession, by the decree-holder-auction-purchaser is governed by Article 164 and not by Article 166 of the Regulation.— **45 T. L. R.,** *316.*

**3.** See also Page 756, *Supra.*— **18 T. L. J.,** *633.*

## REGULATION VIII OF 1100.

## (*The Civil Procedure Code*).

**Section 8.**

**1.** The suit was for damages on account of the defendant's felling down the trees in a Kandukrishi holding in which the plaintiff was entitled to an one-fourth share, the defendants 1 to 3 being the owners of the remaining three-fourths share. *Held.*—The sanction of Government contemplated in Section 8 is essential for the suit.

The right to damages will necessarily involve a right to the trees in question which will fall within the definition of immovable property under Section 2 (7) of the General Clauses Regulation. A suit of this nature should be taken to relate to land, and, therefore, as falling within the purview of Section 8 (33 T. L. R., 240 Distinguished.)— **19 T. L. J.,** *1136.*

**2.** See also Regn. VIII of 1090, Sec. 16.— **43 T. L. R.,** *466* (=**17 T. L. J.,** *879*).

### Section 10.

1. The suit was to set aside on Otti and Kuzhikanom mortgage executed by defendants 6 to 8, by plaintiffs who claimed to be of the same Tarwad as defendants 6 to 8 on the ground of want of good and valid consideration. The contention was that defendants 1 to 5 as the mortgagees of defendants 6 to 8 should be bound by a prior judgment against the latter. *Held.*—After a mortgage has been duly created, the mortgagor in whom the equity of redemption is vested, no longer possesses any such estate as would entitle him to represent the mortgagee in a subsequent suit so as to render that decision binding upon and conclusive against such mortgagee. Defendants 1 to 5 cannot claim under defendants 6 to 8 within the meaning of Section 9 C. P. C. (old).

Admissions by a joint tenant, co-sharer, partner and such like are admissions by all the joint tenants, co-sharers and partners. Admissions by a tenant in common are not, however, admissions against other tenants in common.— **4 S. D.,** *169.*

### Section 19.

The plaintiff brought the suit in the lower Court against the defendants for recovery of the value of jaggery sold to them. The defendants contended *inter alia* that the Court had no jurisdiction to try the suit, themselves being absent foreigners, and denied the plaint agreement of sale.

The lower Court raised the various issues that arose upon the pleadings, and, on the application of the defendants, disposed of the issue relating to the question of jurisdiction after taking the evidence relating thereto, holding that it had jurisdiction to try the suit. The lower Court based its conclusion on its findings that the place intended for the payment of the price of jaggery was within its jurisdiction and that the defendants had voluntarily submitted to its jurisdiction.

Against the above order of the lower Court, the defendants preferred the revision petition. *Held.*—The finding of the lower Court on the question of submission to jurisdiction was correct. The conduct of the defendants before it clearly showed that there had been a voluntary submission to its jurisdiction by them. The submission should be deemed to have been made voluntarily not only in cases where the defendant appears and pleads to the merits but also when, although protesting, he also pleads on the merits, and even if he merely appears in order to protest against jurisdiction. The motive for the appearance is perfectly immaterial in deciding the question of voluntariness in such cases.

The deletion of Explanation III to Section 14 of the Code of 1065 has not effected any change in the law, for, under the Explanation in the old Code, specific reference was made to the places where the rights and the infringements thereof which constitute the cause of action arose, thereby implying that in the cases of contracts Courts will have jurisdiction even when a portion of the cause of action arose within their territorial limits.

It is doubtful whether the general Rule that a debtor should follow his creditor for payment could be invoked for jurisdictional purposes in the nature of the wording of Section 14 (old). The place of payment of money for purposes of Section 14 seems to have reference only to places where the contract makes any provision with reference thereto.— **19 T. L. J.,** *940.*

### Section 31.

1. Payments made out of Court should not be taken into account in the computation of the maximum amount realisable in execution under Section 21 of Regulation IV of 1010 (F. B.). *Held by majority.*—Agreements between the parties in the course of the execution proceedings as to the enhanced rate of interest and as to the amount that has to be recognised as principal can be enforced by the execution Court.

After obtaining a release from arrest on the strength of an agreement as regards

enhanced interest and the amount to be treated as principal, the judgment-debtor cannot go behind the same and require the Court to ignore the terms on which he had been released and allow execution of the decree as originally passed irrespective of the later undertakings. *Held per Joseph Thaliath, J.*—In no case can a decree-holder realise through Court interest amounting to more than the original principal. Any agreement entered into between the parties, whether approved by the Court or not, cannot be allowed to defeat this principle.— **46 T. L. R.**, *338* (=**19 T. L. J.**, *1162*).

## PART II—EXECUTION.
### (*General.*)

**1.** The decree-holder's remedy of possession of lands sold in Court-auction was by an application under Section 238 C. P. C., (old) and not by a separate suit.

The cause of action for a declaratory suit is the denial of the plaintiff's right by some person coupled with the fact that unless the plaintiff takes steps to have his right declared against such person, there is a reasonable danger that plaintiff might lose relevant evidence by lapse of time or be barred from enjoying the benefit of such rights in the future.

One other test also to see whether it is advisable to give a declaratory decree is to enquire whether a plaintiff is in a position at the time of the suit to claim any more substantial relief in respect of the plaint property against the defendant denying his title or against other persons, and if such substantial relief would necessarily be a declaration of title. If it would so imply the better course is to dismiss the declaratory suit and leave the plaintiff to sue for the more substantial reliefs.— **4 S. D.**, *44*.

**2.** Where on an application for execution by the assignee of a decree, it is found that the decree is void on account of the death of the defendant prior to the date of the final hearing, the fact of death of the defendant being unknown to both parties at the time of the assignment : *Held.*—The assignee can recover the purchase money in a separate suit from the assignor.— **4 S. D.**, *57*.

**3.** A decree for money obtained in the Court of first instance was reversed on appeal by the High Court on the contention of a supplemental defendant whose rights thereunder were not declared. But before the decision of the High Court, the money due to plaintiff under the original Court decree was recovered by him. *Held.*—The Court could recover the money from the plaintiff on its own motion.— **4 S. D.**, *99*.

**4.** A hypothecated two separate sets of properties to plaintiff and 2nd defendant respectively. 2nd defendant sued on the document, got a decree, attached the properties covered by plaintiff's hypothecation deed, and himself became the auction purchaser. Plaintiff subsequently got a decree on his document and in execution found that the properties had been already sold. The Munsiff refused to order a re-sale. *Held* (in reversal of the Munsiff's decree but in confirmation of the lower appellate Court's decree),—The property should be resold and 2nd defendant was not a necessary party to the execution proceedings in this suit, he not being a representative of any of the parties thereof.— **4 S. D.**, *194*.

**5.** The auction purchase by the decree-holder of some properties belonging to the judgment-debtor having been set aside at the instance of intervenors who claimed to be the real owners, he sought further execution of the decree including the amount realised by the (subsequently cancelled) auction sale. The lower Court held that the appellants should not be allowed to do so. *Held.*—All questions relating to the execution of the decree between the parties should be determined under Section 238 C. P. C., (old), and not by a separate suit.

The decree-holder was clearly entitled, under the circumstances, to execute the decree in full as if no sale had taken place.— **4 S. D.,** *302.*

6. Decree was passed on 26-3-1066. The application for sale of the hypothecated properties and for attachment of other properties was made on 23-2-'78. The hypothecated properties were sold on 3-7-'78. Attachment list was put in on 5-7-'78, and attachment effected on 8-8-'78. The execution application of 23-2-'78 was struck off on 25-10-'78 for non-payment of batta, retaining the attachment. On 17-11-'78, a fresh application was put in for sale of the attached properties. *Held.*—The execution was not barred as the last application was not a fresh application for execution, but only a renewal of the former application of 23-2-'78.

Orders passed in execution after notice to judgment-debtors are not *res judicata* against them.— **4 S. D.,** *343.*

7. Plaintiff moved the execution Court for redelivery of the excess portion, but the petition was dismissed for want of evidence. Plaintiff then brought the present suit for recovery of the excess property so delivered. *Held.*—The suit related to a question arising in execution, and plaintiff having moved the execution Court, no fresh suit lay.

The plaint might be treated as an application under Section 238 C. P. C. (old).— **4 S. D.,** *383.*

8. The position of the decree-holder who seeks to enforce his decree against certain properties on the ground of their being his debtor's assets differs in no way from that of a person preferring a claim. The burden of proof is on the decree-holder who asserts that the property seized in execution of his decree was the property of the deceased debtor and as such in the possession of the judgment-debtor.— **19 T. L. J.,** *1338.*

9. The plaintiff and second defendant were members of an undivided Varyar family and the plaint property which belongs to the Manampoor Devaswom, had been demised to the plaintiff's family as Karaima for the performance of certain services in the Devaswom. The first defendant obtained a decree for money against the second defendant, and in execution sold and purchased the plaint property. The suit was to set aside the decree and execution proceedings on the grounds that the debt in question was unsupported by consideration and necessity and that the property was inalienable. The Courts below allowed the suit holding that the property was inalienable and could not be sold in execution and left open the question of consideration and necessity for the debt. The first defendant preferred the special appeal. *Held.*—The special appeal had to be dismissed (F. B.)

*Per Parameswaran Pillai and Venkata Rao, JJ.*—The holder of land granted for the performance of services which he has no right to alienate has not such an interest in the land as is capable of being transferred or sold in execution of a decree against him.— **19 T. L. J.,** *1338.*

10. A decree was passed against the first defendant and the Tarwad properties of defendants 1 and 2. The decree was *ex parte*. The first defendant had the *ex parte* decree set aside. Then the first defendant and the plaintiff compromised the suit and a decree in terms of the compromise was passed under which the first defendant and the Tarwad properties were made liable. The second defendant raised objections to the execution of the decree in execution proceedings and the objection was allowed by the lower Court. On appeal: *Held.*—It is not open to the second defendant to treat the compromise decree as a nullity, even though he was not a party to the compromise. Such decree is binding on the second defendant until it is vacated by a proper proceeding.

Jurisdiction is the power to hear and determine a matter. It does not depend on the regularity of the exercise of that power

or upon the correctness of the decision pronounced, for the power to decide necessarily carries with it the power to decide wrongly as well as rightly.

A distinction has to be drawn between the existence of jurisdiction and an exercise of jurisdiction. Where the exercise of jurisdiction is declared permissible only on the performance of an action as a condition precedent thereto, it would be a case of absence of jurisdiction until that condition is satisfied and not an improper or wrong exercise of jurisdiction. If, however, jurisdiction is had in the Court, the decision passed by it will continue to have binding force between the parties until vacated by one of the modes allowed by law.

The opportunity allowed to junior members of a Tarwad to contest the validity of a decree as against the Tarwad, in execution, would be available only in cases where the objector had not been a party to the decree but has been brought in on the record for the first time as the legal representative of the deceased Karanavan in execution.

With regard to the effect of decrees against a Karanavan, on the junior members of a Tarwad, the opportunity to contest the validity of such decrees must be restricted to the three classes of cases enumerated in paragraph 8 of the judgment in 21 T. L. R., 41, 43 and 44.

"Where (*a*) there has been a fraud or collusion or treachery on the Karanavan's part, or (*b*) that the Court was cheated into believing that the case was fairly fought or fairly represented when in point of fact it was not so" (L. R. 8 Ch. D. 616), or (*c*) the Karanavan has not defended properly the former suit because the plaint debt being a personal debt of his he could not very well himself defend the suit on behalf of the Tarwad though there was no fraud, collusion or treachery, then the Tarwad had not been properly represented and ought to be given an opportunity in a fresh suit to prove that the debt did not exist or was not binding upon it.— **19 T. L. J.,** ***1273.***

---

### Section 52.

Future rents and profits are not debts within the meaning of the expression used in Section 52. They are therefore not attachable.

Future rents and profits have no existence on the date of the attachment and they do not fall within the ambit of the expression *debitum in presenti solventum in futuro*, when only debts will constitute such.

The distinction must be borne in mind between the case where there is an existing debt, payment whereof is deferred and the case where both the debt and the payment rest in the future. In the former case there is an attachable debt, in the latter there is not.

The principle of the decision in 15 T. L. J., 324 cannot, therefore, be challenged.— **19 T. L. J.,** ***1152.***

---

### Section 58.

No suit could be maintained against a certified purchaser on the ground that the purchase was made benami (F. B.).— **4 S. D.,** ***310.***

---

### Section 59.

No appeal lies from an order passed on a petition for rateable distribution under Section 292. There being a separate remedy by suit provided for the case of those aggrieved by orders under Section 292, C. P. C., (old), no revision lies from such orders.— **4 S. D.,** ***102.***

---

### Section 76.

**1.** In a suit for redemption, the Zillah Judge reversed the Munsiff's decree dismissing the plaintiff's suit and decreed redemption. In special appeal by 1st defendant, it was contended that, as the 1st defendant alone had appealed, the whole suit could not be dismissed but only the claim for redemption as far as it affected the 1st

defendant's share alone. *Held.*—The Appellate Court could pass a decree in favour also of these defendants who did not appeal if the defendant who did appeal succeeded on a ground common to himself and the other defendants.— **4 S. D.**, *140.*

**2.** The cross-appeal cannot re-open any questions which have been decided between co-respondents, but must have reference to the appellant and to the points in dispute between the respondent who takes the cross-appeal and the appellant.— **4 S. D.**, *252.*

### Section 82.

**1.** An order passed in a summary suit is not appealable.— **4 S. D.**, *300.*

**2.** No appeal lies against an order passed in the exercise of the inherent jurisdiction of the Court under Section 115.— **19 T. L. J.**, *1138.*

### Section 85.

A suit by a Melottidar for recovery of mortgaged property on the strength of a release deed executed by the mortgagee's Tarwad whose mortgage term for 12 years had not expired on the date of suit. *Held.*—As the 12 years' term had not expired, there was no valid objection to the surrender of the property, and it might be the duty of the Appellate Court to take notice of events happening since the order challenged in appeal was made.—**4 S. D.**, *136.*

### Section 108.

In execution of an *ex parte* decree the properties of the judgment-debtor were sold in court auction and purchased by a stranger and the amount deposited by him in Court was drawn by the decree-holder towards satisfaction of his decree. The *ex parte* decree was subsequently set aside. The lower Court thereupon passed an order in execution ordering the decree-holder to deposit in Court the amount drawn by him. It was contended for the decree-holder in revision that the remedy of the auction-purchaser lay by a separate suit and that the lower Court was incompetent to direct restitution: *Held.*—The order for restitution passed by the lower Court was competent.

The principle of the doctrine of restitution is that on the reversal of the judgment the law raises an obligation in the party to the record who received the benefit under an erroneous judgment to make restitution to the other party for what he had lost. That obligation it is the duty of the Courts to enforce, unless it is shown that restitution would be clearly contrary to the real justice of the case. If it is the legal effect of a decree to allow the person in whose favour it is passed to execute it, it is no less the effect of a decree reversing it to direct him to disgorge everything that he has received on the strength of such decree. This power has to be exercised by virtue of the inherent jurisdiction of the Courts as they have to see that no advantage is had by reason of their erroneous decisions. In such cases, the Court has the inherent jurisdiction to call upon a party who has received from Court monies on the strength of its decisions subsequently vacated, to pay the same back, and such directions could be issued irrespective of the fact that there is no specific provision in the Civil Procedure Code authorising the same. Even if it is considered that such a provision is necessary, the powers conferred upon the Court by Section 115 seem sufficiently comprehensive.— **19 T. L. J.**, *1228.*

### Section 109.

**1.** The accepted rule of construction as regards surety bonds is that they should be construed strictly and in a manner favourable to the guarantor.

If the terms of contract in writing are capable of different constructions, it is permissible to examine the conduct of the parties to explain or elucidate the expressions used therein.— **19 T. L. J.**, *1089.*

**2.** Plaintiff obtained an order of injunction on furnishing security for six years' mesne profits. The security was furnished

by a surety-bond executed by plaintiff's son charging certain specified properties under which he agreed that the amount of such profits if they became due to the third defendant under the final decision of the suit may be realised from the properties comprised in the bond. The suit having been dismissed with costs, the third defendant applied for realisation of the mesne profits from plaintiff by sale of the properties on which the amount of such profits had been charged under the bond. The question arose whether, in the circumstances, the third defendant should be given relief in execution proceedings or whether he should seek his remedies by suit: *Held.*—In this and similar cases, the only mode of enforcing the bond must be by the Court making an order in the suit upon an application to which the surety is a party, that the property charged be sold unless before a day named the surety finds the money.— **45 T. L. R.,** *477.*

### Section 115.

See Sec. 82 above.— **19 T. L. J.,** *1138.*

" 108 " .— **19 T. L. J.,** *1228.*

### Order I, Rule 3.

The Sirkar granted Pattah in respect of certain Viruthi lands after levying Vilayartham and put the plaintiff in possession in 1071, and plaintiff leased the lands to defendant who paid rent till 1076. The defendant contended that he was in possession for the last 50 years and denied plaintiff's allegations: *Held.*—The Sirkar was a necessary party to determine whether the Sirkar's right to grant Pattah was in existence when that alleged right was exercised and Pattah granted to plaintiff.—

**4 S. D.,** *369.*

### Order IX.

The principles to be borne in mind in determining whether, in any case, there was appearance or not, are—

*Firstly.*—If the party or his pleader is not present in Court, there could be no appearance as contemplated in the provisions of Order IX so far as such party is concerned.

*Secondly.*—No such appearance could be held to have been entered even if the party, or his pleader, or both are present and their application for time is refused whereupon they retire from the conduct of the case. Such retirement need not expressly be stated to the Court, the same being liable to be gathered from the circumstances made out in the case.

*Thirdly.*—The expression of inability to conduct or a proposal to retire from the conduct of the case must be made when the case is taken up for trial on a particular date. Such intimation given by the party or his agent or his pleader after participating in the conduct of the case, the same being not in connection with applications for the grant of time, would not justify such conduct being held to constitute an appearance within the meaning of the above Order.

*Fourthly.*—The *bona fides* of the party with reference to the default referred to above is not a matter which will have a material bearing in the determination of the question of appearance, as the same has to be taken into account only in disposing of an application for restoration under Order IX, Rule 13.

Rules 2 and 3 of Order XVII are independent and mutually exclusive.—

**45 T. L. R.,** *391* (=**19 T. L. J.,** *1201*).

### Order XVIII, Rule 17.

Though the Code of 1065 did not contain any express provisions relating to local inspection by the presiding Officers of the trial Courts, the right to do the same has been recognised.

In the amending Code of 1100, statutory recognition of the authority of the Court to conduct the local inspections has been made by the insertion of Rule 17 of Order XVIII.

The object of local investigation that could be made by the presiding Officer is for understanding the evidence adduced before the Court and not for being used as the foundation of the judgment. A judgment based purely on the result of local investigation will ordinarily be unsupportable and will have to be set aside.

The sounder rule is that a Court making a local investigation is bound to commit to writing whatever facts have been noticed by it during the visit. In the absence of such a record, the appellate Court will be unable to examine the soundness or otherwise of the conclusions arrived at by the trial Court. Such commitment to writing is therefore imperative.

Whenever a local investigation is made by Court, it is bound to place on the record of the case, a bill showing the actual charges incurred in connection with such inspection, under Rule 728 of the Civil Courts' Guide.— **19 T. L. J., *1345*.**

---

**Order XXI, Rule 14.**

**1.** An assignee in writing of the rights under a decree can apply for execution of the decree to the Court which passed the decree, execution having to be allowed thereon as if the original decree-holder himself had applied for the same.

Even mortgagees of decrees would be transferees of decrees within the purview of the above provision.

Partial assignments would attract the provisions of the Rule.

The assignment should clearly relate to the decree. A mere assignment of property in writing would not ordinarily operate as an assignment of a decree, nor would a mere release operate as an assignment within the meaning of the Rule.

The transfer has to be in writing. An oral transfer is ineffectual for this purpose. Such a transferee from one of the joint decree-holders can validly apply for execution.

An application by him would take effect in favour of all.

If he gives up the remaining portion of the decree and execution is allowed to proceed with the other decree-holders on record, it may operate as a bar for execution with respect to the balance.

Strictly construed, the Rule would imply that, in the case of transfers, an application for execution alone is contemplated thereunder. In the nature of the wording of the Rule, it is doubtful whether it could be said that, apart from an order allowing or refusing execution, the Legislature has considered as formal order recognising the assignment essential under this Rule.

The first Proviso to the Rule insists upon notice being given to the decree-holders and judgment-debtors and their being heard before execution is allowed to be proceeded with. A compliance with the provisions of this proviso is imperative. In the absence of such a notice and the disposal of the objections invited thereunder, all the proceedings taken thereafter would be null and void.

What is required under the Rule is that the application should be for execution with the assignee on record and that it is incumbent on the execution Court to issue notice of such application to the decree-holders and judgment-debtors and hear their objections. If the prayer on the application was only for the substitution of the names, the Court should require the party to amend the application by inclusion of the reliefs sought for. If without such amendment, orders had been passed for such substitution alone, the same could be treated as one allowing execution within the meaning of Clause 5 of Article 166 of the Limitation Regulation.

For purposes of execution, an application could be made only by the person who is on record as the decree-holder in cases where the application for execution by the assignee has been refused. The provisions contained in the Rule relate only to the proceedings,

the validity or otherwise of the transfer having to be determined by other rules of law relating to transfers generally.

Under the second proviso to the Rule, it would not be improper to treat decrees based on simple mortgages or hypothecation deeds as those for payment of money, even though a right to enforce the debt against certain specified property is allowed. It is however essential that there should be a specific direction for payment by the defendant jointly with others. In the absence of such a provision, the propriety of applying this Rule seems to be doubtful.

It is only in cases where owing to fraud or other infirmative circumstances which would invalidate the transaction as a whole or where the contract cannot be taken to have been a completed one or to have binding effect in the eye of the law that execution could be refused under the first proviso.— **45 T. L. R.**, *364*.

**2.** Order XXI, Rule 14, does not prohibit a transferee of a decree from applying for recognition as assignee and for execution to the Court to which the decree has been sent for execution. The use of the word 'may' shows that the application to the Court which passed the decree is merely permissive and does not deprive the jurisdiction conferred on the Court of transfer to deal with applications of this kind.

Words in a statute which are only directory, permissive or enabling should ordinarily receive such a construction except in cases where the thing to be done is for the public benefit or in advancement of public justice. In the latter classes of cases, such a provision should be construed as compulsory requiring the things referred to, to be done. As regards the import of the word 'may' occurring in statutes, it has to be observed that its ordinary connotation is of a permissive nature. Unless a contrary intention is clear from the context, this construction alone is allowed to be made.—

**19 T. L. J.**, *1279*.

---

**Order XXI, Rule 28.**

When an attachment was set aside in pursuance of an order passed on a claim petition which itself was nullified by a fresh suit at the instance of the decree-holder: *Held*.—The former attachment revived and until actually set aside by order of Court, was still subsisting.— **4 S. D.** *51*.

---

**Order XXI, Rule 51.**

In execution of a decree of the Travancore Court, a decree passed by the British Court was attached and the British decree was transferred for execution to the Travancore Court. During the pendency of an application for execution, one of the plaintiffs in the British decree died. *Held*. The execution of the transferred decree in the Travancore Court need not be stayed for the purpose of having the representative of the deceased impleaded by an application to the proper Court (the British Court), the attaching creditor being virtually in the possession of a transferee of the British decree, unless notice to the contrary has been received by the Travancore Court.— **4 S. D.**, *66*.

---

**Order XXI, Rule 86.**

**1.** Where the legal representative of the judgment-debtor presented two applications on the same day, the one praying to set aside Court sale and the other praying that the money deposited should not be given to the decree-holder: *Held*.—The deposit contemplated by Section 307-A is an unconditional deposit. The two applications should be read together, the one as supplementing the other. The deposit is not an unconditional deposit.—

**4 S D.**, *376*.

---

**Order XXI, Rules 94 & 96.**

Where a decree-holder in executing the decree did not apply under Section 317, C. P. C., (old) within one month of the obstruction but put in a fresh execution petition for delivery, and the Munsiff dismissed

it on the ground that the petitioner's proper course was to have put in a petition under Section 317: *Held.*—There was nothing to prevent a second execution petition, specially where the obstructor was a judgment-debtor (see the use of 'may' in Section 317), and every judgment-creditor has a right to put in a fresh execution application unless he is barred by limitation.

**4 S. D., *298.***

### Order XXI, Rules 97-98.

Where a claim petition presented under Section 321 is disallowed, a fresh suit to establish the right to present possession must be instituted within one year under Article 7 of the Limitation Regulation (old). But a suit brought on the strength of title is not barred by Article 7.—

**4 S. D., *32.***

### Order XXII, Rule 4.

Under Section 352, the Court is bound to place on record the name of the person alleged by the plaintiff to be the legal representative of the deceased defendant.

There is nothing in Clause 18 of Section 557 which confines the right of appeal against an order under Section 352 to the person who has been made a party.—

**4 S. D., *386.***

### Order XXIII, Rule 3.

1. A decree cannot be construed so as to extend its terms. Hence, a compromise decree which contained a provision that defendant undertook to build a wall in two months and that, if defendant made default, plaintiff might build it himself cannot be supplemented by the provision that, if plaintiff builds the wall on defendant's default, he should get the whole costs of such building in that suit itself in execution.— **4 S. D., *94.***

2. A decree did not embody the terms of a compromise and did not give all the declarations and reliefs or establish all the rights and liabilities agreed to by the parties under the agreement, but merely dismissed the suit then brought as the parties had compromised their disputes. *Held.*—The agreement could not be regarded as binding on the parties as a decree of Court, and it could not also be treated as a separate agreement validly binding on the Tarwad members as it was not registered.

**4 S. D., *133.***

3. A decree was passed in favour of the mortgagee for 8,500 Fs. mortgage amount and 884 Fs. by way of interest. In execution of this decree, the property in question was proclaimed for sale. In the proclamation schedule, the amount to be realised was specified by mistake to be 9,644 Fs. The schedule however was rectified before the actual sale. Within 30 days of the sale, the respondent who had meanwhile derived title from the judgment-debtors deposited the sale price of 8550 Fs. together with the five per cent. commission and got the sale set aside. The auction-purchaser (appellant) objected to the cancellation of the auction-sale on the ground that the whole amount specified in the proclamation of sale ought to have been deposited before the cancellation of the sale. *Held.*—The deposit made by the respondent was clearly sufficient.— **45 T. L. R., *326.***

### Order XXXI, Rule 1.

The usage of the Devaswom is the governing factor in questions arising as to whether a Manushyam and Mootadu have the power to grant Kanom leases of Devaswom lands without the consent of the Urallers.— **4 S. D., *69.***

### Order XXXIII, Rule 11.

Plaintiff sued her husband for separate maintenance, past and future. A decree was passed in her favour awarding her future maintenance at a certain rate. Her claim for past maintenance was disallowed. She preferred an appeal claiming a higher rate as monthly allowance and also arrears of past maintenance. The parties then adjusted the matter out of Court and put in a compromise petition. The question arose as to who should be held liable for the payment of Court fees due to the Sirkar.

*Held.*—The party who is responsible for the payment of Court fees to the Sirkar is the appellant as she must be deemed to have "failed in the suit" within the meaning of Order XXXIII, Rule 11. (F. B.)—
**45 T. L. R., *405*.**

---

**Order XXXVII, Rules 1 and 2.**

In a suit for the removal of Karanavan, plaintiff prayed for an injunction against defendant's dealing with Tarwad property, the District Munsiff granted his application restraining defendant from alienating Tarwad property pending suit. On appeal, the question arose whether Tarwad property was property in dispute under Section 471 C. P. C., and whether a general injunction against alienation could be granted. *Held.*—It was doubtful whether the application would fall under Section 471, but it may come under Section 472 under the head of a suit for restraining defendant from committing injury, and even if it does not so come under Section 472, the Court has inherent powers to pass all interlocutory orders necessary to see that its final decree is not deprived of any portion of its effectiveness by the act of parties *pendente lite*.

That portion of the injunction order which prohibited alienation generally was bad.— **4 S. D., *870*.**

---

**Civil Courts' Guide.**

**1.** Article 429, Clauses (2) and (3) of the Civil Courts' Guide relate also to dismissals for default made after the framing of the issues.— **19 T. L. J., *1133*.**

**2.** It is incumbent on the Court under Article 383 of the Civil Courts' Guide to note in its judgment whether a refund is allowed or not.— **19 T. L. J., *1255*.**

**3.** Some of the Adhikaris of a Devaswom sued the defendants for an injunction to restrain them from performing certain services in the temple on the ground that they had been removed from their offices by the management of the Devaswom. This prayer was allowed by the trial Court as regards the 2nd defendant. On appeal, this decision was reversed and the suit was dismissed as against the second defendant as well. The second defendant then applied to the lower Court in execution for recovery of costs and a sum of 19613 and odd Fanams as damages awardable by way of restitution. The lower Court allowed the claim only to the extent of Fs. 14072. The second defendant filed an appeal as regards the balance disallowed and the Devaswom as regards the amount awarded. It was contended (1) that *ad valorem* fee had to be paid on amounts involved in the appeal, (2) that Article 338 of the Civil Courts' Guide had ceased to be operative as Section 238 of the old C. P. C. had been repealed and as no amended Notification had been published after the Code of 1100, (3) that even if Article 338 of the Civil Courts' Guide was applicable, the present claim should be treated as one for mesne profits: *Held.*—The appeal memoranda have to be taxed with a fee of Rs. 2, under Schedule II, Article VI (*b*), of the Court Fees Regulation read with Article 338 of the Civil Courts' Guide.

(2) Article 338 of the Civil Courts' Guide has not ceased to be operative by the repeal of the old Civil Procedure Code, even though no new Notification has issued subsequent to the passing of the new Code.

(3) The claim cannot be said to be one for mesne profits as it did not relate to profits which the person in wrongful possession of property actually received or might with ordinary diligence have received therefrom.

Notifications issued under the repealed Regulation of 1065 cannot be deemed to have become inoperative by the passing of the Regulation of 1100, especially with reference to matters with respect to which the latter Regulation has not introduced any change in the law.—**45 T. L. R., *254***
**(=19 T. L. J., *1194*.)**

**4.** See also Regn. VI of 1087.—
**19 T. L. J., *811*.**

---

# APPENDIX C.

(1)

*Rules regulating enquiries into the conduct of Public Servants passed by His Highness the Maha Rajah under date the 12th December 1896 corresponding with the 29th Vrischikom 1072 in supersession of the Proceedings dated 18th November 1891, No. 5740/M. 2393.*

## Preliminary.

1. For purposes of these Rules, Public Servants not removable from office without the sanction of His Highness the Maha Rajah shall be designated 'Superior Public Servants' and all others 'Inferior Public Servants.'

## PART I.

## Superior Public Servants.

2. No Superior Public Servant shall be dismissed without a formal and public enquiry in the manner hereinafter described.

3. Whenever on a complaint or otherwise it is found necessary to enquire into the conduct of a Superior Public Servant, the Head of the Department or office in which such Public Servant is employed may make a preliminary enquiry to determine whether there are grounds for a formal and public enquiry. The officer holding the preliminary enquiry may examine such records and such persons as may be necessary to find out the truth of the charge or allegation against the Public Servant concerned, and may also take a statement from such Public Servant. He may, if necessary, and if specially empowered in this behalf, summon any person to give evidence or produce any document in his possession or custody. No formal examination of witnesses is, however, necessary; but a note of the evidence shall be taken by the officer holding the enquiry.

*Explanation.*—A Division Peishkar is the Head of all the Departments and offices in his Division which are under his control and supervision.

4. If from the preliminary enquiry the officer making it considers that there are sufficient grounds for holding a formal and public enquiry, he shall submit a report to Government detailing the charges or specific acts of alleged misconduct which he considers should be enquired into.

5. Whenever it appears to Government from such report or otherwise that it is necessary to hold a formal and public enquiry into the conduct of a Superior Public Servant, a Commission consisting of one or more officers of position shall be appointed for the purpose.

6. The Commission may be appointed by the Dewan unless the accused Public Servant is an officer drawing a monthly salary of Rs. 200 and above or a Tahsildar or a Magistrate, in which case the Commission shall be appointed only with the sanction of His Highness the Maha Rajah.

7. The conduct of the enquiry shall be regulated by the Commissioner when the Commission consists of one member only and by the President of the Commission when the same consists of more than one member.

## DEPARTMENTAL ENQUIRIES RULES.

8. The enquiry shall be held in the presence of the accused, unless the accused after being duly served with a notice, fails without reasonable cause, to attend.

9. The accused shall, before the commencement of the enquiry, be furnished with a list of the charges against him. He shall have the right of cross-examining all the witnesses against him and of examining his own witnesses. He shall be furnished with copies of all evidence against him, and shall have the right of putting in a statement of his defence and any documents relevant to the enquiry. He may also engage a Vakil to defend him.

10. The Commission may summon persons to give evidence or produce documents in their possession or custody either on behalf of the prosecution or the defence.

11. After the close of the enquiry, the Commission shall draw up a report setting forth the evidence and its finding and submit the same with all the proceedings to the Dewan.

12. The Dewan may order further evidence to be taken or call for further explanation of the opinion of the Commission.

13. On receiving the proceedings and such further evidence or explanation as may be called for, the Dewan shall, when the Public Servant accused is one drawing Rs. 200 or above, or a Tahsildar or a Magistrate, submit the same to His Highness the Maha Rajah with his opinion. In other cases, he may, if he sees sufficient reason for doing so, suspend such officer for a period not exceeding 3 months or fine him in any amount not exceeding a month's salary. If higher punishment is deemed necessary, the Dewan shall submit the case with his opinion to His Highness the Maha Rajah.

14. The Rules under this Part do not apply to enquiries into the conduct of Superior Public Servants in the Judicial Department, which are regulated by the Rules passed by His Highness the Maha Rajah under date the 14th Meenom 1059.

---

### PART II.

### Inferior Public Servants.

15. No Inferior Public Servant shall be dismissed except on good and sufficient grounds such as fraud, dishonesty, continued and wilful negligence, gross insubordination, offences involving moral disgrace, proved incompetency.

16. In all cases of dismissal of a Public Servant, the charge against him and the evidence in support of the charge should be reduced to writing, his defence should be either taken in or reduced to writing, and the decision or order should also be in writing. Copies of the whole of such proceedings should be maintained in the office of the dismissing authority, and should also be furnished to the person dismissed.

17. The enquiry should, as far as possible, be conducted in the presence of the accused Public Servant. But if the Public Servant concerned has absconded, the charge as well as the evidence in support of it and a formal order setting forth the charge and the grounds on which the dismissal is resolved on should be recorded.

18. The enquiry in all cases should be thorough and, as far as possible, in judicial form. The admission of evidence need not, however, be restricted by the law of judicial evidence. All evidence which, in the opinion of the enquiring officer, conduces to moral conviction regarding the guilt or innocence of the accused Public Servant may be admitted.

**19.** It is not enough that the Public Servant accused should be told of the charge he has to meet: he should be told also of the evidence and arguments in support of the charge before he is required to defend himself. The accused person may be examined in the form of questions and answers. But this does not deprive him of his right to place on record a full written statement of his defence.

---

## PART III.

## General.

**20.** In dealing with Public Servants, the following general directions should be borne in mind :—

**A.** As a general rule no Public Servant should be dismissed on mere suspicion or on grounds which are not capable of being stated. A compromising suspicion is, in some cases, sufficient reason for removing a Public Servant from the service of Government. In such cases, the Public Servant should not be dismissed with disgrace, but allowed to resign, or simply relieved of his office—the exact case against him being carefully recorded, so that he may, if possible, satisfy any other employer who has the means of livelihood in his gift.

**B.** As a rule no old servants—especially those who have earned or nearly earned their pensions—shall be dismissed except upon very strong proof of serious misconduct. It should be borne in mind that the sudden beggary of a man whose working days are drawing to a close is as serious an exercise of power as a penal sentence of a Court of Justice, and should not be inflicted on haphazard principles.

**C.** In all departmental enquiries, consideration should be given to the previous character of the Public Servant concerned, and especially to any specific instances of good or bad service that may have been officially noted in his case. It would, apart from the question of evidence, work well for the service if Public Servants were able to feel that a good character and acts of good service would stand them in real stead when their conduct is exposed to question. The admission, however, of evidence of previous bad character requires great caution. Care should be taken that a weak case is not unduly supported by reference to previous punishments for misconduct too slight for confidence that it received close attention.

**D.** Controlling and appellate authorities to whom orders of dismissal are submitted for confirmation or an appeal should remember that they have an individual responsibility of their own. They must, of course, on certain points, place confidence on the judgment of the officer who has personally conducted the enquiry, but they should withhold this confidence unless it is clear from the proceedings that the inquiring officer has acted with care and fairness. No defects in the record of enquiry should be passed over with such reflection as that the inquiring officer is a very careful man and that he probably knows a good deal more about the case than he has been able to say. If there are such defects, the case should be remanded for further enquiry, and the controlling officer should commit himself to no opinion of his own till the case is as complete as it can be made.

**E.** In regard to dismissals based on facts or inferences elicited at a judicial trial, it should be remembered that though, in some cases, the conduct of some Public Servant is so mixed up with the matter under adjudication that any after-enquiry into it by the head of his department would be superfluous, what oftener happens is, that some censure is passed on a Public Servant in a side remark from the Bench which he has no opportunity of answering or which the presiding officer may not have thought of sufficient importance to require verification. It would be extremely hazardous and unfair to accept such a

remark as a deliberate judgment. As a general rule, therefore, a Public Servant, unless himself convicted at a judicial trial, has a right to defend himself departmentally against any imputation that he may have therein incurred.

F. In case of dismissal on the ground of continued negligence or incompetency, instances of such negligence or incompetency should have been placed on record before the present intention to dismiss was conceived and gross insubordination should be such as cannot be atoned for by an apology or otherwise. Cases of inefficiency should, as a rule, be met by a readjustment of the duties of the Public Servant without recourse to the harsh steps of removal from office. In cases of dismissal for inefficiency or insubordination, the above rules should be followed, especially the rule requiring that the charge should be reduced to writing and the explanation of the subordinate should be taken in writing and duly considered.

G. No Public Servant shall be removed from service on the ground of ill-health or of physical incompetence to perform his duties unless he has undergone Medical Examination and unless a certificate to his unfitness for further performance of his duties has been obtained. In all such cases, the Public Servant so removed shall be granted the pension or retiring allowance to which he is entitled at the date of such removal.

21. These rules do not apply to punishments other than dismissal—such as degradation, suspension, fine &c. But the general principles above indicated should, as far as possible, be followed. Suspension from office should always be for a definite period.

22. A Public Servant once dismissed upon just grounds shall be permanently excluded from Government employ.

23. These rules do not apply to peons and other menial servants, and to servants in temporary establishments. But even in respect of these servants, responsible officers are expected to exercise a fair and impartial consideration of the case.

---

(2)

## Tax on Kandukrishi wet lands.

### PROCEEDINGS OF THE GOVERNMENT OF HER HIGHNESS THE MAHA RANI REGENT OF TRAVANCORE.

* * * *

*(Order Dis. No. 1559/26/Revenue, dated Trivandrum, 22nd October 1926).*

The correspondence read above relates to the question of commuting into money payments the *pattom* or rent now paid in kind on wet lands held under the Kandukrishi *pattom* tenure. Kandukrishi lands are Crown lands which, although included in the State *Ayacut*, are the private property of the Sovereign. Holders of such lands are only tenants-at-will with no permanent right of occupancy. The rent due on Kandukrishi lands is now recovered in the same manner as revenue from Government lands under the special provision made for the purpose in the Revenue Recovery Regulation. But in cases of default the lands cannot be attached or sold as the holders have no right of ownership over them.

## APPENDIX C.

2. The rent on Kandukrishi wet lands was payable wholly in paddy before the last Settlement and the practice has been continued after the Settlement also in accordance with paragraph 28 of the Settlement Proclamation, dated the 14th Kumbham 1061. During the Settlement, the lands, after having been demarcated and surveyed and assessed on the same principles as *Pandarapattom* lands, were allowed to be enjoyed by the holders on the then existing terms subject to the condition that the payment of the rent was to be in kind as theretofore. All extra payments outside the *paattom* were abolished.

3. The question of abolishing the system of rent recovery in kind on Kandukrishi lands was considered by the Government along with the general question of abolishing taxation in kind on *Pandaravaga* lands including *Devaswomvaga* lands. The latter question was decided in the year 1906 and, under G. O. No. C/t, dated the 2nd February 1906, the system of levying land tax in kind was wholly abolished in respect of all Sirkar lands and money payment was substituted from the 1st Chingam 1082. In view of practical difficulties and of the need for further consideration, Kandukrishi lands were not included in the application of the Government Order of 1906.

4. Since then the desirability of the change has been constantly before the Government. At the 14th Session of the Assembly, the Member for the Neyyattinkara taluk suggested, that, if deemed necessary, even a higher commutation rate than that fixed for Sirkar lands might be adopted for Kandukrishi lands. Members of the Legislative Council also in the course of discussion on the annual budget and also by means of interpellations frequently drew attention to the matter. Memorials and resolutions passed at public meetings have been received from tenants of Kandukrishi lands representing the hardship and inconvenience incidental to the present system of collecting the *paattom* in kind. A deputation of tenants of Kandukrishi lands also waited on the Dewan on the 14th June 1926 and presented a memorial in which they pressed the need for the early abolition of payment in kind.

5. Towards the close of the year 1924, the then Dewan Peishkar, Quilon, urged the desirability of commuting the *paattom* on Kandukrishi lands into money and he submitted proposals to the Land Revenue Commissioner. The Land Revenue Commissioner thereupon instituted a further enquiry into the matter and submitted his final report to the Government in his letter dated the 21st August 1925. Mr. K. Narayanan Pandalay and Mr. S. Parameswara Aiyar, whom the Land Revenue Commissioner consulted in their capacity as Dewan Peishkars of the Trivandrum and Quilon Divisions, advocated the abolition of the system of payment of rent in kind and the substitution of money payments instead. The Land Revenue Commissioner expressed the view that, if the Government could arrange to obtain through contractors the paddy required for the supply of rice to the Palace and for payment of pensions, *jenmibhogam*, etc., the best course would be to allow the Kandukrishi tenants to pay their rent either in kind or in money according to their convenience at the market rates and that this arrangement might be tried for some years and necessary changes introduced in the light of the further experience gained. A conference to discuss the question was held on the 15th October 1926, the Dewan presiding. The Land Revenue Commissioner was unavoidably absent, but the Dewan Peishkars of Quilon and Trivandrum who were present were in favour of the immediate total abolition of the system of payment of Kandukrishi *paattom* in kind.

6. Her Highness's Government have carefully considered the question in all its aspects and they have no hesitation in holding that the present system of collecting in kind the *pattom* on Kandukrishi lands is attended with many disadvantages and inconveniences and that its abolition will be beneficial both to the tenants and to the Government in diverse ways. For instance,

(*a*) it will put an end to the abuse and exaction of which the holders of Kandukrishi lands complain and will remove a temptation to corruption from the subordinates of the Kandukrishi Department;

(*b*) it will eliminate anomalies and defects in the land revenue accounts and render the administration of lands and the control of expenditure easy, uniform and effective;

(*c*) it will effect a saving in expenditure as the existing agency for the collection and storage of paddy can be substantially reduced, if not wholly abolished and the collection and accounting can be entrusted to the regular revenue establishment, slightly strengthened if need be; and

(*d*) above all, it will lighten the burden of Kandukrishi tenants and remove their longstanding grievances.

**7.** The Government accordingly resolve to abolish the system of payment in kind in respect of Kandukrishi *pattom* lands and to substitute a money payment instead. As regards the rate of commutation, the Government find from statistics received from the Land Revenue and Income-Tax Commissioner that the *vilatharam* brought to credit on account of this paddy revenue comes to 18,85,253 fanams per annum on an average which gives a commutation rate of 24 Chs. 2 cash per para of paddy *i. e*, 4 Chs. 2 cash in excess of the present standard rate of 20 Chs. employed for purposes of accounting and 5 Chs. 3 cash less than the average market price of paddy for the 5 years ending 1099 which was 29 Chs. 3 cash per para. At the Karkatakam Session, 1101, of the Legislative Council, Mr. K. K. Thomas, Member for Kottayam taluk, urged that the commutation scheme should not be delayed any further and that the commutation rate might be fixed even at the full market rate. In these circumstances and having regard to the impermanent tenure of Kandukrishi lands the Government will be justified in fixing the commutation rate at the average market price of paddy in the State. But in pursuance of the policy adopted by the Government in connection with the abolition of grain tax on Sirkar lands and with due regard to the public good the Government prefer to be liberal in determining the rate. They are accordingly pleased to fix the commutation rate at 24 Chs. per para of paddy. This rate will be liable to revision at the end of six years with due reference to the market rates of paddy prevailing during the period. The rate for conversion is substantially lower than the prevailing market rate. The results which must follow upon so fixing it are fully realised. Grain will have to be purchased at higher prices to meet Palace requirements, *jenmibhogams*, *thirippuvarams*, and, possibly, family and political pensions. These transactions will involve a loss; but in introducing a measure the principal object of which is to do away with a system that weighs heavily upon a large body of tenants of Crown lands, Her Highness's Government will not be actuated by a meticulous balancing of profit and loss.

**8.** There are at present certain *Oozhiams* or services rendered by Kandukrishi tenants. Some of the Kandukrishi lands are charged with the *Oozhiam* of supplying *vari* and *gnavara* paddy to the Palace and also *dharmapullu* for value paid to the holders. Taking the case of *vari* and *gnavara* first, it is seen that for every para of grain of these varieties supplied by the tenants, they are given an equal quantity of paddy of the ordinary variety. These services are attached only to the lands comprised in the Ambalapuzha Kandukrishi. The Land Revenue Commissioner reports that a total quantity of 526 paras and 2½ *edangalies* of *vari* and 1,480 paras and 6¼ *edangalies* of *gnavara* is now required to be supplied by the tenants. This has to be collected by the *Vicharippukars* of 10 out of the 12 *Nelpuras* attached to the Ambalapuzha Kandukrishi (excepting Aranazhi and Cherukole) and has to be delivered at the Nedumudi *Nelpura*. *Gnavara ari* and *Oora*

are *Vari ari* prepared out of *vari* paddy are sent to the Palace every month by special agency at stated times. It has been ascertained from the Kandukrishi Tahsildar, Ambalapuzha, that the *Oozhiam* or duty laid on the Kandukrishi tenants of supplying *vari* and *gnavara* is seldom discharged by them. In actual practice the required quantity of *vari* and *gnavara* is purchased by the *Vicharippukar* of the Nedumudi *Nelpura* from wherever he can procure them by advancing money from his own pocket. He then arranges for their conversion into rice and delivery at the Palace. For the paddy so purchased by the *Vicharippukar* he fixes his own price and the value of the paddy so fixed is recovered rateably from the tenants whose duty it is to make the supply, along with the *paattom*, by coercive action when necessary, under the Revenue Recovery Regulation. In other words, in practice the *Oozhiam* is never satisfied by the tenants on whom the service is imposed and the paddy required for conversion into *amritari* is actually obtained by purchase in the open market. The *Oozhiam* has thus fallen into desuetude because the Kandukrishi tenants do not generally cultivate *vari* or *gnavara* themselves on their lands and, this being so, they prefer to pay the value of the paddy they have to supply even at high rates instead of themselves finding the required quantity from elsewhere and delivering it at the *Nelpuras*. For obvious reasons it is undesirable to continue an arrangement of this kind, as it on the one hand operates as a source of hardship to the tenants burdened with this service, and on the other, gives room for malpractices and exactions by the *Nelpura* subordinates. There can be very little difficulty for the Government to make efficient arrangements for the supply of the required quantity of *vari* and *gnavara*, the conversion of the same into rice of approved quality and the delivery of the several varieties of rice at the Palace on the prescribed dates. The Government are, therefore, pleased to direct that the Kandukrishi tenants who are now charged with the *Oozhiam* of supplying *vari* and *gnavara* be discharged from that obligation.

9. As regards *dharmapullu*, 54,726 loads of grass have to be supplied annually by the Kandukrishi tenants under the Champakulam, Kainakari, Panaveli, Kozhimukku, Nedumudi and Talavadi *Nelpuars*. The supply is utilised as a charity for the feeding of cattle attached to the Ambalapuzha Devaswom and also for other cattle in and about Ambalapuzha. On an average, 150 loads of grass have to be supplied daily by the Kandukrishi tenants attached to the above said six *Nelpuras*. For all the 54,726 loads of grass, a *pathivuvila* of 1,719 paras and 6 *edangalies* of paddy is paid to the tenants in cash calculated at the commutation rate of 11 Chs. per para. The money value of the *pathivu vila* comes to Rs. 675 Chs. 15 c. 9., *i. e.*, 5·5 cash per load of grass. For every load of grass in respect of which there is default in supply by the tenants, *vilavasi* at the rate of 1½ Chs. is recovered. It was usual to make provision for this expenditure under *pathivu vila* for *dharmapullu* in the State Charities budget. From the year 1098, when the State Devaswoms were separated, this item was omitted in the State Budget and the question of dispensing with the service and making a money provision for the purpose of carrying on the charity has been under the consideration of the Government. The Government find that the grass is supplied as a charity for feeding stray cattle and that it is not intended exclusively for Devaswom cattle although the latter also are fed out of the grass supplied by the tenants under the *Oozhiam*. The charity being a charge to which the Kandukrishi tenants are subject, there is reason to suppose that it was instituted by the Royal household. The Government therefore consider it advisable to continue the charity and to entrust its administration to the Devaswom Department. As in the case of *vari* and *gnavara*

the tenants burdened with this service do not make the supply either regularly or in full. The Government therefore resolve that, in the best interests of the tenants, they be discharged from this obligation altogether. For the future conduct of the charity, a suitable allotment will be provided annually in the State Charities budget. The Devaswom Commissioner is requested to utilise the funds and arrange to conduct the charity efficiently. The Government desire to make it clear, in this connection, that the charity is intended for the cattle of the locality and not exclusively for the cattle attached to the Ambalapuzha Devaswom.

**10.** Besides *vari* and *gnavara*, a quantity of 54,996 paras of paddy of the ordinary variety out of the Kandukrishi collections is also converted into rice (*Pazhayari, Nediyari and Oonakkalari*), *vittaval*, *malar*, *malarpodi*, etc., and supplied to the Palace, from the Ambalapuzha and Trivandrum Kandukrishies together. This is mostly for use in the *matapallies* for feeding the Palace employes etc., for purposes of *Easwarassevas* and for distribution to *arikoppukars*. The Government consider that the requirements under these heads can be efficiently arranged by local purchase or through contract agency. For the *Nediyari* and *Pazhayari* supplied from the Kandukrishi Department, value calculated at the rate of 11 Chs. per para of the equivalent paddy is paid by the Palace in accordance with G. O. No. 4998/L. R., dated the 12th June 1910. This arrangement will continue.

**11.** There is another point for consideration in this connection. Certain payments such as family and political pensions, *jenmibhogam*, *arthapalisa*, *thiruppuvaram*, etc., are now made in paddy collected by the Kandukrishi Department after the commutation into money payments of tax on Sirkar lands. From the date this Order comes into force, Sirkar paddy will not be available for payment of such dues and other suitable arrangements will have to be made to satisfy these claims. Separate orders will issue in regard to this matter.

**12.** The scheme as detailed above will be brought into effect from the 1st Meenam 1102 provided the majority of Kandukrishi tenants signify their consent, within a period to be fixed, to paddy rent being converted into money at the commutation rate herein fixed. Should any tenants prefer to continue to pay the rent in paddy, the introduction of the scheme will not be delayed on that account, but a separate account will be opened for such tenants and the scheme will be given effect to in respect of those who accept the conversion into money. The Government desire it to be clearly understood that this Order effects a change merely in the manner of payment of the *paattom* on Kandukrishi lands and will not in any way affect their tenure as Crown lands. The scheme will not apply to Kandukrishi *tanatu* lands.

---

# APPENDIX D.

## CHRONOLOGICAL TABLE OF REGULATIONS PASSED.

| Year. | Number. | Subject-matter. | Remarks. |
|---|---|---|---|
| 1010 | I | Powers and Jurisdiction of Munsiffs. | Repealed, in part, by Regulations I of 1057, I of 1059, II of 1065 and VIII of 1100. |
| | II | Assembling of District Panchayats. | Repealed by Regulation I of 1057. |
| | III | Execution of Decrees. | Repealed by Regulations I of 1057 and II of 1065. |
| | IV | Jurisdiction of Zillah Judges. | Repealed, in part, by Regulations I of 1057, II of 1065 and VIII of 1100. |
| | V | Appeal Court. | Repealed by Regulation II of 1065. |
| | VI | Police. | Repealed, in part, virtually by Regulation VI of 1056. Repealed, in part, by Regulations VI, VII and VIII of 1063. |
| | VII | Constituting the Zillah Courts, Criminal Courts. | Repealed, in part, by Regulation VIII of 1063 and wholly by Regulation V of 1067. |
| 1023 | I | Investing Sub-officers of Districts with Police powers. | Repealed by Regulation V of 1067. |
| 1025 | I | Reducing the number of Munsiffs. | Repealed by Regulation I of 1057. |
| | I | Suits *in forma pauperis*. | Repealed by Regulation I of 1057. |
| 1032 | I | Establishing Sessions Courts. | Repealed by Regulation V of 1067. |
| 1035 | I | Port Dues at Alleppey. | Repealed by Regulation I of 1036. |
| 1036 | I | Do. | Repealed by Regulation I of 1094. |
| 1037 | I | Abolishing Sessions Courts and constituting Civil and Criminal Courts. | Repealed by Regulations I of 1057, II of 1065 and V of 1067. |
| | II | Code of Civil Procedure. | Repealed by Regulation II of 1065. |
| 1039 | I | British Electric Telegraph. | Repealed by Regulation III of 1091. |
| | II | Copyright of Books. | Repealed by Regulation VIII of 1092. |
| 1040 | I | Criminal Breach of Contract. | Repealed by Regulation II of 1080. |
| | ... | Appointment of Vakils. | All except Section 31 repealed by Regulation III of 1075. |
| | II | Adjudication of claims to Waste Lands. | Repealed by Regulation III of 1097. |
| | III | Limitation of Suits. | Repealed by Regulation II of 1062. |
| 1041 | I | Amending Regulation I of 1037. | Repealed by Regulation I of 1057. |
| | II | Jurisdiction of Munsiffs. | Repealed by Regulations I of 1057 and II of 1065. |
| | III | Admission of Criminals as Approvers. | Repealed by Regulation V of 1067. |
| 1042 | I | Registration of deeds. | Repealed by Regulation I of 1070. |
| | II | Amending Regulation III of 1040. | Repealed by Regulation II of 1062. |
| 1043 | I | Admission of Vakils in Criminal Cases. | Repealed by Regulation III of 1075. |
| 1047 | I | Conduct of business in the Sadar Court. | Repealed by Regulation II of 1065. |
| | II | Re-distribution of Magisterial powers. | Repealed by Regulation V of 1067. |
| 1049 | I | Establishing a Zillah Court at Alwaye. | Repealed by Regulation I of 1057. |
| 1050 | I | Native Passenger Ships. | |
| 1051 | I | Unauthorised Lotteries. | |
| 1052 | I | Certain offences relating to Marriage. | |
| | II | Criminal Breach of Contract. | Repealed by Regulation II of 1080. |
| | III | Amending Regulation I of 1042. | Repealed by Regulation I of 1070. |

# APPENDIX D.

## CHRONOLOGICAL TABLE OF REGULATIONS PASSED.—*Contd.*

| Year. | Number. | Subject-matter. | Remarks. |
|---|---|---|---|
| 1053 | I | Empowering Sub-officers of Districts to dispose of Police cases during Tahsildar's tours on duty. | Repealed by Regulation V of 1067. |
| | II | Court Fees. | Repealed by Regulation I of 1062. |
| 1054 | I | Abkari. | Repealed by Regulation IV of 1073. |
| | II | Coffee Stealing Prevention. | |
| | III | Remodelling the constitution of the Sadar Court. | Repealed by Regulation II of 1057. |
| 1055 | I | Fixing limit of time for presentation of appeals under Regulation I of 1054. | Repealed by Regulation IV of 1073. |
| 1056 | I | Cattle Trespass. | Repealed by Regulation IV of 1086. |
| | II | Introducing the Indian Penal Code and Whipping Act. | Repealed by Regulation I of 1074. |
| | III | Introducing the British Indian Criminal Procedure Code. | Repealed by Regulation V of 1067. |
| | IV | Police. | Repealed by Regulation IV of 1095. |
| 1057 | I | Civil Courts. | Repealed by Regulation II of 1084. |
| | II | Reconstituting the Sadar Court. | Repealed by Regulation I of 1065. |
| | III | Destruction of Records. | Repealed by Regulation II of 1098. |
| 1058 | I | Amending Regulation I of 1036. | Repealed by Regulation I of 1094. |
| | II | Amending Regulation IV of 1056. | Repealed by Regulation IV of 1095. |
| | III | Registration of titles in land and establishment of boundary marks. | Repealed by Regulation X of 1094. |
| 1059 | I | Stamp Duties. | Repealed by Regulation IV of 1080. |
| 1060 | I | Jenmi and Tenant Commission. | |
| | II | Amending Regulation III of 1058. | Repealed by Regulation X of 1094. |
| | III | Police Superannuation Fund. | Repealed by Regulation III of 1070. |
| 1061 | I | Amending Regulation I of 1036. | Repealed by Regulation I of [illegible]94. |
| | II | Amending Regulation II of 1057. | Repealed by Regulation I of 1065. |
| | III | Arms, Ammunition and Military Stores. | Repealed by Regulation V of 1084. |
| | IV | Execution of Foreign Decrees. | Repealed by Regulation III of 1101. |
| 1062 | I | Court Fees. | Repealed by Regulation VI of 1087. |
| | II | Limitation. | Repealed by Regulation VI of 1100. |
| 1063 | I | Introducing the Indian Companies Act. | Repealed by Regulation I of 1092. |
| | II | Legislative Council. | Repealed by Regulation V of 1073. |
| | III | Amending Regulation I of 1059. | Repealed by Regulation IV of 1080. |
| | IV | Protection of Forests. | Repealed by Regulation II of 1068. |
| | V | Empowering Revenue officers to issue summons, &c. | Amended by Regulation V of 1099. |
| | VI | Opium and Bhang. | Provisions regarding bhang, repealed by Regulation IV of 1073. Totally repealed by Regulation IV of 1090. |
| | VII | Salt Revenue. | Repealed by Regulation III of 1088. |
| | VIII | Tobacco Revenue. | Repealed by Regulation I of 1087. |
| 1064 | I | Anchal Service. | Repealed by Regulation IX of 1089. |
| 1065 | I | High Court. | Repealed by Regulation I of 1067. |
| | II | Code of Civil Procedure. | Repealed by Regulation VIII of 1100. |
| 1066 | I | Taking of the Census. | |
| | II | Amending Regulation VIII of 1063. | Repealed by Regulation I of 1087. |
| | III | Amending Regulation I of 1057. | Repealed by Regulation II of 1084. |
| | IV | Loans for Agricultural Improvements | Repealed by Regulation IX of 1094. |
| 1067 | I | High Court. | Repealed by Regulation IV of 1099. |

## CHRONOLOGICAL TABLE OF REGULATIONS PASSED.—*Contd.*

| Year. | Number. | Subject-matter. | Remarks. |
|---|---|---|---|
| 1067 | II | Restricting unauthorised occupation of Government lands. | Repealed by Regulation III of 1091. |
| | III | Acquisition of land for public purposes. | Repealed by Regulation XI of 1089. |
| | IV | Reformatories. | Repealed by Regulation VI of 1099. |
| | V | Code of Criminal Procedure. | Amended by Regulations II and III of 1074, IV of 1082, VII of 1085, VII of 1088, II of 1090, IV of 1094, III of 1095 and VI, IX and XII of 1097. |
| 1068 | I | Recovery of Arrears of Public Revenue. | Amended by Regulations III of 1087, VIII of 1094, X of 1097 and II of 1099. |
| | II | Protection and Management of Forests. | Amended by Regulations IV of 1071, IX of 1085, IV of 1089 and VIII of 1097. |
| | III | Suits valuation. | |
| | IV | Recovery of Rent due to certain Estates. | Amended by Regulation IV of 1096. |
| | V | Amending Regulation II of 1062. | Repealed by Regulation VI of 1100. |
| 1069 | I | Amending Regulation III of 1061. | Repealed by Regulation V of 1084. |
| | II | Towns Conservancy and Improvement. | Repealed by Regulation III of 1076. |
| 1070 | I | Registration of Deeds. | Repealed by Regulation II of 1087. |
| | II | Amending the Code of Civil Procedure, Regulation II of 1065. | Sections 2 to 6 both inclusive Repealed by Regulation VIII of 1100. Repealed, except Section 11, by Regulation III of 1101. |
| | III | Repealing Regulation III of 1060. | |
| 1071 | I | Management of Prisons. | |
| | II | Protection to Judicial Officers. | |
| | III | Public Gambling and keeping of common Gaming House | Amended by Regulation IV of 1085. |
| | IV | Amending Regulation II of 1068. | |
| | V | Jenmi and Kudiyan Regulation. | |
| 1072 | I | Epidemic Diseases. | Passed under Section 10 of Regulation II of 1063, and superseded by Regulation II of 1073. |
| | II | General Clauses. | |
| | III | Construction, repair and maintenance of irrigation works and the conservation and distribution of water for purposes of irrigation. | Amended by Regulations VI of 1090, V of 1097 and II of 1103. |
| 1073 | I | Empowering certain officers to conduct searches and arrest persons in certain cases, for the better prevention of unauthorised manufacture and sale of liquor. | Passed under Section 10 of Regulation II of 1063, and superseded by Regulation IV of 1073. |
| | II | For preventing the spread of Epidemic Diseases. | |
| | III | Preservation of Game. | Repealed by Regulation XII of 1089. |
| | IV | Amending the law relating to the import, export, transport, manufacture, sale and possession of intoxicating liquor and of intoxicating drugs. | Amended by Regulations IV of 1074 and I of 1104. |

# APPENDIX D.

## CHRONOLOGICAL TABLE OF REGULATIONS PASSED.—*Contd.*

| Year. | Number. | Subject-matter. | Remarks. |
|---|---|---|---|
| 1073 | V | Amending the law relating to the Legislative Council. | Repealed by Regulation I of 1095. |
| | VI | Investing officers, holding Departmental Enquiries into the conduct of public servants, with certain powers. | |
| 1074 | I | Penal Code. | Amended by Regulations I of 1089, IV of 1094 and IX of 1097. |
| | II | Amending the Code of Criminal Procedure, Regulation V of 1067. | |
| | III | Amending the Code of Criminal Procedure, Regulation V of 1067. | |
| | IV | Amending the Abkari Regulation, IV of 1073. | |
| | V | Acquisition of Land for Railways. | |
| | VI | Wills. | Section 6 repealed by Regulation I of 1088, so far as it relates to the Nairs. |
| 1075 | I | Amending the Government Land Conservancy Regulation, II of 1067. | Repealed by Regulation IV of 1091. |
| | II | Negotiable Instruments. | |
| | III | Consolidating and amending the law relating to Vakils. | Schedule 2 repealed by Regulation IV of 1080. Amended by Regulation I of 1085. |
| 1076 | I | Taking of the Census. | |
| | II | Amending the Tobacco Smuggling Regulation, VIII of 1063. | Repealed by Regulation I of 1087. |
| | III | Amending the Towns Conservancy and Improvement Regulation, II of 1069. | Repealed by Regulation V of 1095. |
| | IV | To make better provision for the efficient working of the British Postal Department in Travancore. | Amended by Regulations V of 1094 and I of 1098. |
| 1077 | I | Amending the Civil Courts Regulation, I of 1057. | Repealed by Regulation II of 1084. |
| | II | To make provision for the care of the person and property of minors in Travancore. | |
| | III | Segregation and medical treatment of Pauper Lepers. | Amended by Regulations III of 1089 and IV of 1097. |
| 1079 | I | To regulate the possession and use of Dynamite. | Passed under Section 15 of Regulation V of 1073, and superseded by Regulation V of 1079. |
| | II | For the better regulation of Printing Presses and Newspapers and the registration of books. | Amended by Regulation I of 1093. |
| | III | To provide for the better administration of certain Hindu Religious Endowments in Travancore. | Amended by Regulations VI of 1088 and III of 1092. |
| | IV | Prevention of Cruelty to Animals. | Amended by Regulations II of 1089 and X of 1093. |
| | V | To regulate the possession and use of Explosives. | |
| | VI | The Nayar Brigade Regulation. | |

## APPENDIX D.

### CHRONOLOGICAL TABLE OF REGULATIONS PASSED.—*Contd.*

| Year. | Number. | Subject-matter. | Remarks. |
|---|---|---|---|
| 1080 | I | To make provision for the care of the person and estates of Lunatics. | Amended by Regulation VIII of 1089. |
| | II | To consolidate and amend the law relating to Breaches of Contracts. | Amended by Regulation V of 1087. |
| | III | To prevent loss to Government by the default or misconduct of Public Accountants. | |
| | IV | To consolidate and amend the law relating to Stamps. | Amended by Regulation IV of 1087. |
| 1081 | I | To provide for the prevention of Glanders and Farcy. | Passed under Section 15 of Regulation V of 1073 and superseded by Regulation V of 1091. |
| 1082 | I | Extradition. | Amended by Regulation II of 1094. |
| | II | To provide for the vesting and administration of property held in trust for Charitable Purposes. | |
| | III | Inspection and management of Steam-Boilers and Prime-Movers. | |
| | IV | Amending the Code of Criminal Procedure, Regulation V of 1067, as amended by Regulations II and III of 1074. | |
| 1084 | I | To provide for the establishment of Public Canals and Public Ferries and for the management thereof. | Repealed by Regulation VI of 1096. |
| | II | To amend and consolidate the law relating to Civil Courts. | Amended by Regulation VI of 1092. |
| | III | Declaring the rights of Government and of private individuals with respect to Hidden Treasure and prescribing the Rules to be observed on the discovery of such treasure. | |
| | IV | Amending the Police Regulation, IV of 1056, as amended by Regulation II of 1058. | Repealed by Regulation IV of 1095. |
| | V | To consolidate and amend the law relating to Arms, Ammunition and Military Stores. | |
| 1085 | I | Amending the Vakils Regulation, III of 1075. | |
| | II | Amending the Government Land Conservancy Regulation, II of 1067, as amended by Regulation, I of 1075. | Repealed by Regulation IV of 1091. |
| | III | Amending the Agricultural Improvement Loans Regulation, IV of 1066. | Repealed by Regulation XI of 1094. |
| | IV | Amending the Public Gambling Regulation, III of 1071. | |
| | V | Amending the Towns Conservancy and Improvement Regulation, III of 1076. | Repealed by Regulation V of 1095. |
| | VI | To provide for the adoption of a uniform system of Weights and Measures throughout Travancore. | Amended by Regulation IV of 1092. |

CHRONOLOGICIAL TABLE OF REGULATIONS PASSED.—*Contd.*

| Year. | Number. | Subject-matter. | Remarks. |
|---|---|---|---|
| 1085 | VII | Amending the Code of Criminal Procedure, Regulation V of 1067, as amended by Regulations II and III of 1074 and IV of 1082. | |
| | VIII | Amending the Land Acquisition Regulation, III of 1067. | Repealed by Regulation XI of 1089. |
| | IX | Amending the Forest Regulation, II of 1068, as amended by Regulation IV of 1071. | |
| 1086 | I | Amending the High Court Regulation, I of 1067. | Repealed by Regulation IV of 1099. |
| | II | To provide for certain matters in connection with the taking of the Census. | |
| | III | To provide for the cutting or breaking of diminished, defaced or counterfeit British Indian Silver Coins. | Amended by Regulation I of 1091. |
| | IV | To consolidate and amend the law relating to Trespass by Cattle. | Amended by Regulations VII of 1090 and II of 1093. |
| | V | Amending the Code of Civil Procedure, Regulation II of 1065, as amended by Regulation II of 1070. | Repealed by Regulation VIII of 1100. |
| 1087 | I | To consolidate and amend the law regulating the cultivation, manufacture, possession, transport, import, export and sale of Tobacco. | |
| | II | To amend the law relating to the Registration of Documents. | Clause (*a*) of Sub-section (1) of Section 64 partly repealed by Regulation II of 1098. |
| | III | Amending the Revenue Recovery Regulation, I of 1068. | |
| | IV | Amending the Stamp Regulation, IV of 1080. | |
| | V | Amending the Breach of Contract Regulation, II of 1080. | |
| | VI | To modify and re-enact the law relating to Court Fees. | Section 12 and Article VII of Schedule II Repealed by Regulation VIII of 1100. |
| | VII | To regulate the use of Motor Vehicles in Travancore. | Repealed by Regulation VI of 1094. |
| | VIII | Amending the High Court Regulation I of 1067, as amended by Regulation I of 1086. | Repealed by Regulation IV of 1099. |
| | IX | To make special provision to prevent Thefts of Rubber. | |
| 1088 | I | To define and amend the law of marriage, succession and family management of the Nairs. | Repealed by Regulation II of 1100. |
| | II | Amending the Towns Conservancy and Improvement Regulation, III of 1076, as amended by Regulation V of 1085. | Repealed by Regulation V of 1095. |

# APPENDIX D.

## CHRONOLOGICAL TABLE OF REGULATIONS PASSED.—*Contd.*

| Year. | Number. | Subject-matter. | Remarks. |
|---|---|---|---|
| 1088 | III | To consolidate and amend the law relating to the Salt Revenue. | |
| | IV | To provide for the Recovery of Tolls on public roads and bridges. | Amended by Regulation III of 1098. |
| | V | To consolidate the law relating to the levy of Sea Customs duties and the management of sea ports. | Amended by Regulation IV of 1093. |
| | VI | Amending the Hindu Religious Endowments Regulation, III of 1079. | |
| | VII | Amending the Code of Criminal Procedure, Regulation V of 1067, as amended by Regulations II and III of 1074, IV of 1082 and VII of 1085. | |
| 1089 | I | Amending the Penal Code, Regulation I of 1071. | |
| | II | Amending the Prevention of Cruelty to Animals Regulation, IV of 1079. | |
| | III | Amending the Lepers Regulation, III of 1077. | |
| | IV | Amending the Forest Regulation, II of 1068, as amended by Regulations IV of 1071 and IX of 1085. | |
| | V | To regulate labour in Factories. | |
| | VI | To declare the law for the Regulation of Hackney Carriages. | Amended by Regulation I of 1103. |
| | VII | Body Guard Regulation. | |
| | VIII | Amending the Lunacy Regulation, I of 1080. | |
| | IX | To consolidate and amend the law relating to the Anchal offices in the State. | Amended by Regulation IX of 1096. |
| | X | To provide for the constitution and control of Co-operative Societies. | |
| | XI | To amend the law for the Acquisition of Land needed for public purposes. | Amended by Regulations V of 1096 and I of 1099. |
| | XII | To make better provision for the Protection and Preservation of Game and Fish. | Amended by Regulation VI of 1091. Repealed by Regulation XI of 1097 in so far as it relates to fish. |
| 1090 | I | To provide for the establishment of Village Panchayat Courts in Travancore. | |
| | II | Amending the Code of Criminal Procedure, Regulation V of 1067, as amended by Regulations II and III of 1074, IV of 1082, VII of 1085 and VII of 1088. | |
| | III | Amending the Police Regulation, IV of 1056, as amended by Regulations II of 1058 and IV of 1084. | Repealed by Regulation IV of 1095. |
| | IV | To consolidate and amend the law relating to Opium. | |
| | V | Amending the Motor Vehicles Regulation, VII of 1087. | Repealed by Regulation VI of 1094. |

## APPENDIX D.

### CHRONOLOGICAL TABLE OF REGULATIONS PASSED.—*Contd.*

| Year. | Number. | Subject-matter. | Remarks. |
|---|---|---|---|
| 1090 | VI | Amending the Irrigation Regulation, III of 1072. | |
| | VII | Amending the Cattle Trespass Regulation, IV of 1086. | |
| | VIII | To make better provision relating to Insolvency in Travancore. | |
| | IX | To faciliate the collection of Debts on Successions and afford protection to parties paying debts to the representatives of deceased persons. | Amended by Regulation V of 1092. |
| | X | To make provision for the protection of Inventions and Designs. | |
| 1091 | I | To amend the British Coinage Regulation, III of 1086. | |
| | II | To consolidate the law relating to the levy of Land Customs duties. | Amended by Regulation III of 1093. |
| | III | To make better provision for the protection and efficient working of the British Electric Telegraph in Travancore. | |
| | IV | To consolidate and amend the law checking the unauthorised Occupation of Government lands. | |
| | V | To provide for the prevention of Glanders and Farcy among horses | |
| | VI | To amend the Game and Fish Protection Regulation, XII of 1089. | |
| 1092 | I | To amend the law relating to Trading Companies and other Associations. | |
| | II | To consolidate and amend the rules of law applicable to Intestate Succession among Indian Christians in Travancore. | |
| | III | To further amend the Hindu Religious Endowments Regulation, III of 1079, as amended by Regulation VI of 1088. | |
| | IV | To amend the Weights and Measures Regulation, VI of 1085. | |
| | V | To amend the Succession Certificate Regulation, IX of 1090. | |
| | VI | To amend the Civil Courts Regulation II of 1084. | |
| | VII | To define and amend the law relating to the holding of Markets in Travancore. | |
| | VIII | To define and amend the law relating to the Copyright in literary and other works published in Travancore. | |
| 1093 | I | To amend the Press Regulation, II of 1079. | |

# APPENDIX D.

## CHRONOLOGICAL TABLE OF REGULATIONS PASSED.—*Contd.*

| Year. | Number. | Subject-matter. | Remarks. |
|---|---|---|---|
| 1093 | II | To amend the Cattle Trespass Regulation, IV of 1086, as amended by Regulation VII of 1090. | |
| | III | To amend the Travancore Land Customs Regulation, II of 1091. | |
| | IV | To amend the Sea Customs Regulation V of 1088. | |
| 1094 | I | To amend the law relating to Ports and Port charges. | |
| | II | To amend the Extradition Regulation I of 1082. | |
| | III | To define and amend the law relating to Chitties in Travancore. | Amended by Regulations VII of 1097 and I of 1100. |
| | IV | To further amend the Penal Code and the Code of Criminal Procedure. | |
| | V | To amend the British Post Regulation IV of 1076. | |
| | VI | To consolidate and amend the law relating to Motor Vehicles in Travancore. | |
| | VII | To provide for the registry of Ships built in Travancore. | Passed under Section 15 of Regulation V of 1073 and superseded by Regulation II of 1095. |
| | VIII | To amend the Revenue Recovery Regulation I of 1068, as amended by Regulation III of 1087. | |
| | IX | To consolidate and amend the law relating to the making of loans of money by Government for Agricultural Improvements. | |
| | X | To consolidate and amend the law relating to Survey of lands and settlement of Boundary disputes. | |
| | XI | To make provision for the prevention of the spread of Diseases among Animals in Travancore. | |
| | XII | To provide for the prevention, arrest and eradication of Plant Pests and Plant Diseases in Travancore. | |
| 1095 | I | To amend the law relating to the Legislative Council. | Repealed by Regulation II of 1097. |
| | II | To provide for the registry of Ships built in Travancore. | |
| | III | To amend the Code of Criminal Procedure, Regulation V of 1067, as amended by Regulations II and III of 1074, Regulation IV of 1082, Regulation VII of 1085, Regulation VII of 1088, Regulation II of [illegible] and Regulation IV of 1094. | |
| | IV | To consolidate and amend the law relating to the Police Force in Travancore. | |
| | V | To make better provision for the organisation and administration of Municipalities in Travancore. | |

CHRONOLOGICAL TABLE REGULATIONS PASSED.—*Contd.*

| Year. | Number. | Subject-matter. | Remarks. |
|---|---|---|---|
| 1095 | VI | To declare that Gold Coins referred to in Section III A of the British Coinage Regulation, III of 1086, as amended by Regulation I of 1091, shall cease to be legal tender. | |
| 1096 | I | To provide for certain matters connected with the taking of Census. | |
| | II | To provide for the prevention of the use of tobacco by young persons. | |
| | III | To amend the Anchal Regulation, IX of 1089. | Passed under Section 12 of Regulation I of 1095 and superseded by Regulation IX of 1096. |
| | IV | To amend the Estates Rent Recovery Regulation, IV of 1068. | |
| | V | To amend the Land Acquisition Regulation, XI of 1089. | |
| | VI | To amend the law relating to the establishment of public canals and public ferries. | |
| | VII | To make provision for the registration of births and deaths in rural areas. | |
| | VIII | To provide for the imposition of a tax on incomes derived from certain sources. | Amended by Regulation V of 1100. |
| | IX | To amend the Anchal Regulation, IX of 1089. | |
| | X | To amend the Prevention of Cruelty to Animals Regulation, IV of 1079, as amended by Regulation II of 1089. | |
| 1097 | I | To make provision for facilitating and regulating the supply and use of electrical energy for lighting and other purposes. | Passed under Section 13 of Regulation I of 1095. |
| | II | To amend the law relating to the Legislative Council. | |
| | III | To provide for the assignment of Government lands. | |
| | IV | To amend the Lepers Regulation, III of 1077, as amended by Regulation III of 1089. | |
| | V | To amend the Irrigation Regulation, III of 1072, as amended by Regulation VI of 1090. | |
| | VI | To amend the Code of Criminal Procedure, Regulation V of 1067, as amended by Regulations II and III of 1074, IV of 1082, VII of 1085, VII of 1088, II of 1090, IV of 1094 and III of 1095. | |
| | VII | To amend the Chitties Regulation, III of 1094. | |

28841

Regulations and Proclamations of Travancore-1100-1105, Vol. 6

019 Index of Cases

7 Regulation 8 of 1100

24 Preliminary-Short Title, Commencement extent, Definition etc

37 Part I-Suits in General

37 Jurisdiction of the Courts and Res Judicata

98 Place of Suing

117 Institution of Suits

117 Summons and Discovery

119 Judgement and Decree

124 Interest (Sec.31)

135 Costs (Sec.32)

146 Part II-Execution

146 General (Sec.33 and Sec.34)

158 Courts by which decrees may be executed (Sec.35-39)

174 Questions to be determined by Court executing decree(Sec.40)

199 Limit of time for execution(Sec.41)

214 Transferees and legal representatives(Sec.42 and Sec.43)

217 Procedure in execution(Sec.44-46)

220 Arrest and Detention(Sec.47-51)

230 Attachment(Sec.52-55)

249 Sale(Sec.57-59)

265 Resistance to execution(Sec.60)

266 Part III-Incidental Proceedings

266 Commissions(Sec.61-64)

267 Part IV-Suits in particular cases

267 Suits by or against the Government or Public Officers in their Official capacity(Sec.65-67)

275 Interpleader (Sec.68)

277 Part V-Special Proceedings

277 Arbitration (Sec.69)

278 Special Case(Sec.70)

278 Suits relating to Public Matters(Sec.71-72)

285 Part VI-Supplemental Proceedings(Sec.74-75)

289 Part VII-Appeals

289 Appeals from Original Decrees(Sec.76-78)

303 Appeals from Appellate Decrees(Sec.79-81)

310 Appeals from Orders (Sec.82-84)

313 General provisions relating to Appeals(Sec.85-86)

318 Part VIII-Reference, Review and Revision(Sec.87-89)

330 Part IX-Rules (Sec.90-96)

333 Part X-Miscellaneous(Sec.97-123)

361 First Schedule-Order

387 Order 1: Parties to Suits

420 Order 2: Frame of Suits

438 Order 3: Recognised Agents and Pleaders

443 Order 4: Institution of Suits

443 Order 5: Issue and Service of Summons

455 Order 6: Pleadings Generally

476 Order 7: Plaint

490 Order 8: Written Statement and Set-off

506 Order 9: Appearance of Parties and consequence of Non-appearance

527 Order 10: Examination of Parties by the Court

528 Order 11: Discovery and Inspection

539 Order 12: Admissions

543 Order 13: Production, Impounding and Return of Documents

549 Order 14: Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon

554 Order 15: Disposal of the Suit at the first hearing

555 Order 16: Summoning and Attendance of Witnesses

568 Order 17: Adjournments

574 Order 18: Hearing of the Suit and Examination of Witnesses

580 Order 19: Affidavits

581 Order 20: Judgement and Decree

610 Order 21: Execution of Decrees and Orders

769 Order 22: Death, Marriage and Insolvency of Parties

785 Order 23: Withdrawal and Adjustment of Suits

797 Order 24: Payment into Court

799 Order 25: Security for Costs

801 Order 26: Commissions

812 Order 27: Suits by or against the Government or Public Officers in their official capacity

814 Order 28: Suits by or against Military Men

816 Order 29: Suits by or against Corporations

819 Order 30: Suits by or against Firms and Persons carrying on business in names other than their own

824 Order 31: Suits by or against Trustees, Executors and Administrators

825 Order 32: Suits by or against Minors and Persons of Unsound Mind

841 Order 33: Suits by Paupers

854 Order 34: Interpleader

857 Order 35: Special Case

859 Order 36: Arrest and Attachment before Judgement

868 Order 37: Temporary Injuctions and Interlocutory Orders

878 Order 38: Appointment of Receivers

885 Order 39: Arbitration

899 Order 40: Appeals from Original Decrees

941 Order 41: Appeals from Appellate Decrees

941 Order 42: Appeals from Orders

948 Order 43: Pauper Appeals

949 Order 44: Reference
951 Order 45: Review
958 Order 46: Miscellaneous
959 Order 47: Suits triable as Small causes
960 Appendix A-Pleadings
994 Appendix B-Process
1004 Appendix C-Discovey, Inspection and Admission
1009 Appendix D-Decrees
1019 Appendix E-Execution
1039 Appendix F-Supplemental Proceedings
1046 Appendix G-Arbitration
1048 Appendix H-Appeal, Reference and Review
1053 Appendix I-Miscellaneous
1061 Second Schedule-Enactments Repealed
1089 Index to the Code of Civil Procedure
1174 Regulation 6 of 1101-Nanjinad Vellala
1180 Preliminary-Title, Application, Definition etc
1181 Marriage and its Dissolution(Sec.3-11)
1186 Maintenance and Guardianship(Sec.12 and 13)
1187 Intestate Succession(Sec.14-26)
1190 Testamentary Succession(Sec.27)
1190 Adoption(Sec.28 and Sec.29)
1191 Partition of Tarwad Property(Sec.30-32)
1194 Supplemental Provisions(Sec.33-34)
1200 Regulation 1 of 1102-Cinematograph
1202 Definitions(Sec.2)
1205 Certification of Films(Sec.7)
1207 Regulation 1 of 1103-Amend Hackney carriage
1210 Regulation 2 of 1103-Irrigation (Amendment)
1213 Regulation 3 of 1103-Travancore Mines and Minerals
1217 Preliminary-Short Title, Definition etc (Sec.1 and 2)
1220 Prospection for Metals and Minerals(Sec.3-5)
1221 Inspectors(Sec.6-11)
1223 Mining Operations and Management of Mines(Sec.12-14)
1224 Provisions as to Health and Safety(Sec.15-20)
1226 Hours and Limitation of Employment(Sec.21-27)
1230 Rules and Bye-laws(Sec.28-31)
1236 Penalities and Procedure(Sec.32-42)
1239 Miscellaneous(Sec.43-46)
1241 Regulation 1 of 1104-To amend the Abkari
1245 Reguation 1 of 1105-To amend Travancore Legislative Council
1246 Regulation 2 of 1105-Probate and Administration
1262 Preliminary-Short Title, Interpretation of clause etc(Sec.1-4)
1264 Of Grant of Probate and Letters of Administration(Sec.5-24)
1267 Of Limited Grants(Sec.25-48)
1271 Alteration and Revocation of Grants(Sec.49-51)
1272 Of the Practise in granting and revoking Probates and Letters of Administration(Sec.52-88)
1283 Of the Executors of their own wrong(Sec.89-90)
1283 Of the Powers of an Executor or Administrator(Sec.91-100)
1286 Of the Duties of an Executor or Administrator(Sec.101-114)
1289 Of the Assent to a Legacy by Executor or Administrator(Sec.115-120)
1291 Of the Payment and Apportionment of Annuities(Sec.121-123)
1291 Of the Investment of Funds to provide for Legacies(Sec.124-130)
1293 Of the Produce and Interest of Legacies(Sec.131-137)
1295 Of the Refunding of Legacies(Sec.138-149)
1297 Of the Liability of an Executor or Administrator for Devastation(Sec.150-151)
1298 Miscellaneous(Sec.152-160)
1309 Appendices
1310 Appendix A-Rules and Notifications
1444 Appendix B-Case Law
1527 Appendix C-Rules regulating enquiries into the Conduct of Public Servants
1535 Appendix D-Chronological Table of Regulations Passed